

72 Am. Jur. 2d State and Local Taxation Nine XLI A Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

A. In General

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 🔑 2510, 2513 to 2519

A.L.R. Library

A.L.R. Index, Fair Market Value

A.L.R. Index, Taxpayers

A.L.R. Index, Value and Valuation

West's A.L.R. Digest, [Taxation](#) 🔑 2510, 2513 to 2519

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 20, 62](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 642

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

A. In General

§ 642. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2513

A.L.R. Library

[Property tax: effect of tax exempt lessor's reversionary interest on valuation of nonexempt lessee's interest, 57 A.L.R.4th 950](#)

[Requirement of full-value real property taxation assessments, 42 A.L.R.4th 676](#)

[Sale price of real property as evidence in determining value for tax assessment purposes, 89 A.L.R.3d 1126](#)

Real estate tax appraisal is an inexact value determination,¹ and mathematical precision is not required.² In tax valuation cases, actual value is largely a matter of opinion and lacks a precise yardstick for determination with complete accuracy.³ The ultimate purpose of property valuation is to arrive at a fair and realistic value of property being taxed⁴ or its full and fair cash value⁵ or its true and full value⁶ or its true and actual value, which is defined as market value.⁷ Property must be assessed at its just value, and owners of property must bear an equal proportion of the tax burden in proportion to the amount of property owned.⁸ The term "just value" in a constitutional provision regarding real and personal property assessments is the equivalent of market value.⁹ The fair market value of property for tax purposes is a question of fact, the determination of which is primarily within the province of the taxing authorities.¹⁰

The legislature may determine the method or manner in which different forms of property may be valued for taxation.¹¹ A State, when assessing tangible property for tax purposes, has the right to use any fair formula which will give effect to the intangible factors which influence the real value of the property.¹² There is no rigid formula which can be used to arrive at full and true value for property tax assessment purposes, nor is specific weight required to be allocated to any of several approaches.¹³ A statute prescribing a method of valuation of personal property for taxation purposes will be upheld unless it is clearly, palpably, and plainly inconsistent with the fair cash value requirement under the state constitution.¹⁴ Substantial compliance with legislative directives is sufficient in determining the assessed valuation of property.¹⁵ It has also been held that a taxing authority is allowed to choose a reasonable method for determining the full and true value of a property so long as there is no fraud or clear adoption of a fundamentally wrong principle of valuation; provided that a method is not fundamentally wrong, it does not even need to be recognized by the appraisal community.¹⁶ Under this view, while municipal code provisions and a statute offer some broad guidance, the precise method for determining the full and true value of property is within the assessor's discretion.¹⁷

CUMULATIVE SUPPLEMENT

Cases:

The "modified capitalization of income approach" is the most commonly accepted valuation method of the market value of oil and gas property interests; this involves converting a future income stream into a stated value by capitalizing the sum of anticipated future installments of net income, less an allowance for interest and the risk of partial or no receipt of income. *Chevron USA, Inc. v. County of Kern*, 230 Cal. App. 4th 1315, 179 Cal. Rptr. 3d 372 (5th Dist. 2014), as modified on denial of reh'g, (Nov. 19, 2014).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Harold Chevrolet, Inc. v. County of Hennepin](#), 526 N.W.2d 54 (Minn. 1995).
- 2 [WB & T Mortg. Co., Inc. v. Board of Assessors of Boston](#), 451 Mass. 716, 889 N.E.2d 404 (2008).
- 3 [Grant County Assessor v. Kerasotes Showplace Theatres, LLC](#), 955 N.E.2d 876 (Ind. Tax Ct. 2011); [Naumann v. Iowa Property Assessment Appeal Bd.](#), 791 N.W.2d 258 (Iowa 2010); [Brenner v. Banner County Bd. of Equalization](#), 276 Neb. 275, 753 N.W.2d 802 (2008).
- 4 [Commerce Holding Corp. v. Board of Assessors of the Town of Babylon](#), 88 N.Y.2d 724, 649 N.Y.S.2d 932, 673 N.E.2d 127 (1996).
- 5 [WB & T Mortg. Co., Inc. v. Board of Assessors of Boston](#), 451 Mass. 716, 889 N.E.2d 404 (2008).
- 6 [American Crystal Sugar Co. v. Traill County Bd. of Com'rs](#), 2006 ND 118, 714 N.W.2d 851 (N.D. 2006).
- 7 [In re Estate of Craven](#), 281 Neb. 122, 794 N.W.2d 406 (2011); [In re Tax Assessment of Foster Foundation's Woodlands Retirement Community](#), 223 W. Va. 14, 672 S.E.2d 150 (2008).
- 8 [Amax Magnesium Corp. v. Utah State Tax Com'n](#), 796 P.2d 1256 (Utah 1990).
- 9 [Muirgen Properties, Inc. v. Town of Boothbay](#), 663 A.2d 55 (Me. 1995).
- 10 [Soin v. Greene Cty. Bd. of Revision](#), 110 Ohio St. 3d 408, 2006-Ohio-4708, 853 N.E.2d 1165 (2006).
- 11 [Clapp v. Cass County](#), 236 N.W.2d 850 (N.D. 1975); [South Carolina Tax Com'n v. South Carolina Tax Bd. of Review](#), 278 S.C. 556, 299 S.E.2d 489 (1983).
- 12 [Railway Exp. Agency v. Com. of Va.](#), 347 U.S. 359, 74 S. Ct. 558, 98 L. Ed. 757 (1954).
- 13 [Crown Paper Co. v. City of Berlin](#), 142 N.H. 563, 703 A.2d 1387 (1997).
- 14 [Assessor of Roger Mills County v. Unit Drilling Co.](#), 2011 OK 4, 247 P.3d 1170 (Okla. 2011).

- 15 Richter Enterprises, Inc. v. Sully County, 1997 SD 61, 563 N.W.2d 841 (S.D. 1997).
16 Horan v. Kenai Peninsula Borough Bd. of Equalization, 247 P.3d 990 (Alaska 2011).
17 Black v. Municipality of Anchorage, Bd. of Equalization, 187 P.3d 1096 (Alaska 2008).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 643

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy


XLI. Valuation

A. In General

§ 643. Basis of assessment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2514 to 2519

Reduced to its basic elements, the process of taxation of real and personal property involves the valuation of property and applying the rate of taxation upon that valuation.¹ The precise method for determining the "full and true value" of property is within the assessor's discretion.² The tax assessor must consider all factors which affect property value.³ The assessor must consider and give due weight to every element and factor affecting the market value of real property for the purpose of real property taxes.⁴

Definition:

The term "due weight" in a statute requiring every assessor to consider and give due weight to every element and factor affecting the market value of real property implies that every element and factor deserves only so much weight as is appropriate to the valuation problem at issue.⁵ The assessment of property value for tax purposes must take into account any factor affecting the property's marketability.⁶

Under a state constitutional provision, property must be assessed at a just valuation or a fair market value for ad valorem tax purposes: that is, at an amount that a willing purchaser would pay a willing seller when neither is obligated to buy or sell.⁷ Actual value has been defined by statute as the value of property in the market in the ordinary course of trade.⁸ "Full cash value" means market value.⁹

In valuing tangible property, the elements to be considered include the advantages of the location of the property;¹⁰ its earning capacity or productiveness;¹¹ the purpose or use to which it is put;¹² its actual earnings;¹³ the price paid or received for the property;¹⁴ the addition of taxes and freight charges;¹⁵ purchase price, brokerage commission, duties, transportation, and all costs of placing the asset in a condition for use;¹⁶ and any other factors which may influence or enhance its actual value,¹⁷ such as the going-concern value¹⁸ and goodwill.¹⁹ When a board of tax appeals makes a determination of a property's true value for a given year, such determination is to be based on the evidence presented to it in that case, uncontrolled by the value assessed for prior years.²⁰

In the absence of a recent arm's-length sale of the subject property or sales of reasonably comparable land, the assessor must determine its market value from the best information that the assessor can practicably obtain, considering all the elements which collectively have a bearing on the value of the property, and such elements include, among others, cost, depreciation, replacement value, income, industrial conditions, location and occupancy, sales of like property, book value, amount of insurance carried, value asserted in a prospectus, and appraisals procured by the owner.²¹

Data which arises after the relevant assessment date can be used for tax assessment purposes, where its probative value is not outweighed by the risk of hindsight bias or other factors, for the limited purpose of determining the value of the property as of the assessment date; in so doing, the relevant inquiry is whether the evidence reflects information that would be knowable to a hypothetical buyer and seller of the subject property as of the assessment date.²²

CUMULATIVE SUPPLEMENT

Cases:

Board of Tax Review acted within its discretion in finding that county assessor's appraisal was more persuasive than taxpayer's appraisal, even though assessor's appraisal included value of personal property in estimating value of taxpayer's land, as Board determined that, despite that imperfection, assessor's appraisal offered more comprehensive analysis than taxpayer's appraisal, in that it employed all three valuation approaches as opposed to one, and Board assigned most weight to assessor's evidentiary presentation, as assessor's appraiser persuasively challenged reliability of taxpayer's appraisal, while taxpayer's appraiser did not challenge assessor's appraisal in any manner whatsoever. [West's A.I.C. 33-26-6-6\(e\)\(1\). Kooshtard Property I, LLC v. Monroe County Assessor, 38 N.E.3d 750 \(Ind. Tax Ct. 2015\).](#)

Property tax appraisals are based on highest and best use of property. [In re Bilmar Team Cleaners, 2015 VT 10, 114 A.3d 483 \(Vt. 2015\).](#)

City properly used Tier 3 income and cost analysis to verify that its assessments of two oil terminals for property tax purposes under Tier 2 comparable sales analysis were not excessive, though taxpayers' expert prepared valuation that came to contrary conclusion; trial court found that city based income approach on actual income and expenses of terminal operators, that city performed income approach in accordance with state Property Assessment Manual, that taxpayers' expert made significant accounting and other errors in his income analysis, and that taxpayers' expert made errors in cost approach analysis that resulted in substantial understatement of valuation. [Wis. Stat. Ann. § 70.32\(1\). Marathon Petroleum Company LP v. City of Milwaukee, 2018 WI App 22, 381 Wis. 2d 180, 912 N.W.2d 117 \(Ct. App. 2018\).](#)

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 In re 1994 Assessments of Property of Righini, 197 W. Va. 166, 475 S.E.2d 166 (1996).
- 2 Fairbanks North Star Borough Assessor's Office v. Golden Heart Utilities, Inc., 13 P.3d 263 (Alaska 2000).
- 3 Webb/Henne Montgomery Luxury Apts. v. Hamilton Cty. Bd. of Revision, 73 Ohio St. 3d 739, 1995-Ohio-167, 654 N.E.2d 1263 (1995).
- 4 Equitable Life Assur. Soc. of U.S. v. County of Ramsey, 530 N.W.2d 544 (Minn. 1995).
- 5 Equitable Life Assur. Soc. of U.S. v. County of Ramsey, 530 N.W.2d 544 (Minn. 1995).
- 6 Commerce Holding Corp. v. Board of Assessors of the Town of Babylon, 88 N.Y.2d 724, 649 N.Y.S.2d 932, 673 N.E.2d 127 (1996).
- 7 Calder Race Course, Inc. v. Overstreet, 363 So. 2d 631 (Fla. Dist. Ct. App. 3d Dist. 1978).
- 8 Schulz v. Dixon County, 134 Neb. 549, 279 N.W. 179, 119 A.L.R. 1294 (1938).
- 9 Union Oil Co. of Cal. v. County of Ventura, 41 Cal. App. 3d 432, 116 Cal. Rptr. 13 (2d Dist. 1974).
- 10 Claringbold v. Council of Newark, 28 Del. 507, 5 Boyce 507, 94 A. 1102 (1915).
- 11 Utah-Idaho Sugar Co. v. Salt Lake County, 60 Utah 491, 210 P. 106, 27 A.L.R. 874 (1922).
- 12 Branson v. Bush, 251 U.S. 182, 40 S. Ct. 113, 64 L. Ed. 215 (1919).
- 13 South Utah Mines & Smelters v. Beaver County, 262 U.S. 325, 43 S. Ct. 577, 67 L. Ed. 1004 (1923).
- 14 Thaw v. Town of Fairfield, 132 Conn. 173, 43 A.2d 65, 160 A.L.R. 679 (1945).
- 15 Xerox Corp. v. County of Orange, 66 Cal. App. 3d 746, 136 Cal. Rptr. 583 (4th Dist. 1977).
- 16 Xerox Corp. v. County of Orange, 66 Cal. App. 3d 746, 136 Cal. Rptr. 583 (4th Dist. 1977).
- 17 Utah-Idaho Sugar Co. v. Salt Lake County, 60 Utah 491, 210 P. 106, 27 A.L.R. 874 (1922).
- 18 Union Tank Line v. Wright, 249 U.S. 275, 39 S. Ct. 276, 63 L. Ed. 602 (1919).
- 19 Utah-Idaho Sugar Co. v. Salt Lake County, 60 Utah 491, 210 P. 106, 27 A.L.R. 874 (1922).
- 20 TBC Westlake, Inc. v. Hamilton County Bd. of Revision, 81 Ohio St. 3d 58, 1998-Ohio-445, 689 N.E.2d 32 (1998).
- 21 Waste Management of Wisconsin, Inc. v. Kenosha County Bd. of Review, 184 Wis. 2d 541, 516 N.W.2d 695 (1994).
- 22 Boston Gas Co. v. Board of Assessors of Boston, 458 Mass. 715, 941 N.E.2d 595 (2011).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 644

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

A. In General

§ 644. Net income

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2517

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 20](#) (Complaint, petition or declaration—Allegation—Assessor's failure to consider lack of earnings from commercial property)

Evidence of net income may be used to show the fair market value of a parcel of land but only in the absence of a recent arm's-length sale of the property or sales of reasonably comparable property.¹ The income approach to assessing property for property tax purposes calculates the value of income-producing property by capitalizing the property's annual net income; net income is derived by deducting the property's actual annual expenses from the year's gross income.² The income capitalization approach measures the present value of the future benefits of the property.³ For purposes of the income capitalization method for valuing real property, the price that a buyer is willing to pay for the income-producing real property, or the property's full cash value, is determined based on the net operating income that the property will likely yield in a year's time and the property's capitalization rate.⁴ In the income approach to appraising property for tax purposes, the stabilized annual net income figure must reflect the appraiser's estimate of the property's yearly income earning potential, as opposed to merely the income available as of the tax date, because the income approach is based on the fundamental notion that the market value of income-producing property reflects the present worth of the future income stream.⁵

CUMULATIVE SUPPLEMENT

Cases:

Indiana Board of Tax Review could not adopt all of appraiser's values for shopping mall, based on the income approach to valuation, in light of finding that appraiser used capitalization rates that were higher than those indicated in the investor surveys and comparable sales data and, as a result, his rates were not supported by the evidence. [Marion County Assessor v. Washington Square Mall, LLC](#), 46 N.E.3d 1 (Ind. Tax Ct. 2015).

Critical elements in the discounted cash flow approach for determining fair market value of a commercial property for property tax purposes are net income or revenue, which can be discounted back to present value using the predetermined discount rate, to arrive at price; net income is dependent on projected revenues, including capacity revenue and energy prices, less expenses, and it is then discounted by a discount rate, or rate of return, which represents the cost of borrowing money to pay for the purchase of an asset. [TransCanada Hydro Northeast, Inc. v. Town of Rockingham](#), 2016 VT 100, 154 A.3d 486 (Vt. 2016).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Waste Management of Wisconsin, Inc. v. Kenosha County Bd. of Review](#), 184 Wis. 2d 541, 516 N.W.2d 695 (1994).
- 2 [Parkview Court Associates v. Delaware County Bd. of Assessment Appeals](#), 959 A.2d 515 (Pa. Commw. Ct. 2008); [Keswick Club, L.P. v. County of Albemarle](#), 273 Va. 128, 639 S.E.2d 243 (2007).
The income capitalization approach to assess the market value of real property for tax purposes determines the value of income-producing property by capitalizing the income the property is expected to generate over a specific period of time at a specified capitalization yield rate. [Continental Retail, LLC v. County of Hennepin](#), 801 N.W.2d 395 (Minn. 2011).
For purposes of the income capitalization method for valuing real property, a property's net operating income is calculated by taking its effective gross income and then subtracting expenses, including maintenance and upkeep. [Canyon Villas Apartments Corp. v. State](#), 124 Nev. 833, 192 P.3d 746 (2008).
- 3 [Boston Gas Co. v. Board of Assessors of Boston](#), 458 Mass. 715, 941 N.E.2d 595 (2011).
- 4 [Canyon Villas Apartments Corp. v. State](#), 124 Nev. 833, 192 P.3d 746 (2008).
- 5 [Wolf v. District of Columbia](#), 611 A.2d 44 (D.C. 1992).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 645

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

A. In General

§ 645. Necessity of valuation; legislative valuation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2513

In assessing the value of property, a tax assessor has as his or her function to assess all property liable to taxation at its full and fair cash value.¹ Substantial compliance with legislative directives is sufficient in determining the assessed valuation of property.²

In the case of solvent evidences of debt whose face value or actual value are known, it is competent for the State, by direct act of the legislature, to make the assessment without the ceremony of valuation.³ Included in this category are bonds of corporations, municipal and private,⁴ and mortgages of real estate.⁵ However, in the case of property which has no fixed and designated value, a direct assessment by the legislature is impracticable, and the assessment must necessarily be made by administrative officials bound to value each piece of property separately in accordance with their best judgment and belief.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Wickes Asset Management, Inc. v. Dupuis](#), 679 A.2d 314 (R.I. 1996).
- ² [Richter Enterprises, Inc. v. Sully County](#), 1997 SD 61, 563 N.W.2d 841 (S.D. 1997).
- ³ [State v. Clement Nat. Bank](#), 84 Vt. 167, 78 A. 944 (1911), *aff'd*, 231 U.S. 120, 34 S. Ct. 31, 58 L. Ed. 147 (1913).
- ⁴ [State v. City of Baltimore](#), 105 Md. 1, 65 A. 369 (1906).
- ⁵ [Mutual Ben. Ins. Co. v. Martin County](#), 104 Minn. 179, 116 N.W. 572 (1908).
- ⁶ [City of El Paso v. Howze](#), 248 S.W. 99 (Tex. Civ. App. El Paso 1923), writ refused, (Mar. 28, 1923).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 646

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

A. In General

§ 646. Shares of stock

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2510

A.L.R. Library

[Application of "blockage rule" or "blockage discount theory" in determining stock valuation, for purposes of taxation of intangibles, 33 A.L.R.2d 607](#)

Stock represents ownership not just of the assets in question but the ownership of a going concern, and its value is subject to liabilities, market conditions, and all of the other factors which contribute to or detract from the value of a company.¹ In some instances, the statutes set up complete schemes or formulas for stock valuation which the assessors may, or must, follow; in others, the legislatures have merely declared that stock must be appraised at its "full value," or "full cash value," or "true value," and the mode or basis of valuation is left to the judgment of the assessors, subject to review by the proper tribunal.² In the absence of anything in the pertinent statutes to the contrary, there is authority that corporate stock is to be assessed at its market value in the ordinary course of trade as distinguished from its book value or from par value.³

The "stock and debt approach" to the valuation of property for tax purposes, which is a substitute for a market-sales approach, is based upon the premise that the value of assets is equal to total liabilities plus equity and thus assumes that the market value of a company's assets can be imputed from the market value of its equity and debt.⁴

Practice Tip:

The properly recorded value shown on the books of a corporate taxpayer is the value that the taxpayer must report on a franchise tax return pursuant to a statute requiring the taxpayer to determine the value of its issued and outstanding shares of stock according to the total value as shown by the books of the company.⁵

The "blockage rule," used in determining stock valuation in cases involving estate or inheritance taxes, has been held inapplicable in determining the value of corporate stock for the purpose of fixing the amount due under an intangible personal property tax in the absence of a showing of the necessity of selling a large block of the stock.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision, 82 Ohio St. 3d 193, 1998-Ohio-248, 694 N.E.2d 1324 \(1998\).](#)
- 2 [Stevenson v. Metsker, 130 Kan. 251, 286 P. 673 \(1930\).](#)
- 3 [Klein v. Board of Tax Sup'rs of Jefferson County, Ky., 282 U.S. 19, 51 S. Ct. 15, 75 L. Ed. 140, 73 A.L.R. 679 \(1930\).](#)
- 4 [Delta Air Lines, Inc. v. Department of Revenue, State of Or., 328 Or. 596, 984 P.2d 836 \(1999\).](#)
- 5 [Bush & Cook Leasing, Inc. v. Tracy, 79 Ohio St. 3d 87, 1997-Ohio-404, 679 N.E.2d 1077 \(1997\).](#)
- 6 [Florida Nat. Bank of Jacksonville v. Simpson, 59 So. 2d 751, 33 A.L.R.2d 581 \(Fla. 1952\).](#)
As to the "blockage" rule, generally, see [Am. Jur. 2d, Inheritance, Estate, and Gift Taxes § 176.](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 647

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

A. In General

§ 647. Inventory of merchandise

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2510

A.L.R. Library

[Method of calculating value of stock of goods or the like for purposes of tangible personal property tax, 66 A.L.R.2d 833](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 62](#) (Complaint, petition, or declaration—For refund to partnership of taxes based on unconstitutional assessment of stock-in-trade)

In assessing the value of property, a tax assessor must assess all property liable to taxation at its full and fair cash value¹ and may include the cost of replacing inventory, plus labor and overhead.² However, a property owner's degree of fault with respect to the deteriorating condition of taxable property is beyond the scope of a tax assessor's inquiry.³ Thus, it is improper for the court

in a tax-abatement proceeding to consider the cause of the deterioration of a property's condition in reviewing the propriety of a tax assessment.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Wickes Asset Management, Inc. v. Dupuis, 679 A.2d 314 \(R.I. 1996\).](#)
- 2 [Appeal of AMP Incorporated, 287 N.C. 547, 215 S.E.2d 752 \(1975\).](#)
- 3 [Wickes Asset Management, Inc. v. Dupuis, 679 A.2d 314 \(R.I. 1996\).](#)
- 4 [Wickes Asset Management, Inc. v. Dupuis, 679 A.2d 314 \(R.I. 1996\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation Nine XLI B Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

B. Real Property and Interests Therein

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2514](#), [2516](#), [2518](#), [2519](#), [2521](#)

A.L.R. Library

A.L.R. Index, Fair Market Value

A.L.R. Index, Taxpayers

A.L.R. Index, Value and Valuation

West's A.L.R. Digest, [Taxation](#)  [2514](#), [2516](#), [2518](#), [2519](#), [2521](#)

Trial Strategy

[Valuation of Structure Based on Reproduction or Replacement Cost, 8 Am. Jur. Proof of Facts 2d 399](#)

[Overassessment of Income-Producing Property—Neighborhood Shopping Center, 3 Am. Jur. Proof of Facts 2d 1](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 66](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 648

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

B. Real Property and Interests Therein

1. In General

§ 648. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2514](#), [2521](#)

A.L.R. Library

[Requirement of full-value real property taxation assessments, 42 A.L.R.4th 676](#)

[Sale price of real property as evidence in determining value for tax assessment purposes, 89 A.L.R.3d 1126](#)

[Income or rental value as a factor in evaluation of real property for purposes of taxation, 96 A.L.R.2d 666](#)

All real property must be assessed at its true value for taxation purposes¹ but may not be assessed in excess of its full value.² Real property is subject to taxation at its actual value, taking into account the earning capacity of the property, its relative location, desirability and functional use, reproduction costs less depreciation, comparison with other properties of known or recognized value, market value in the ordinary course of trade, and the existing zoning of the property.³ For real property tax purposes, a fee simple estate is to be valued as if it were unencumbered, subject only to the limitations caused by involuntary, government actions, such as eminent domain, escheat, police power, and taxation.⁴ Land is not like commodities, which have a fixed market price at a given period, and its value is determined always by the estimate of the person who values it.⁵ Whenever possible, the tax court should apply at least two approaches in determining the market value of the real estate:⁶ (1) the property must be assessed at its fair market value; and (2) the assessed value must be equitable; that is, the property must be assessed at

a relatively uniform rate with comparable property.⁷ For purposes of the valuation of real property, regardless of which method is being used, the assessor may and should consider all relevant factors to ensure that the taxpayer bears his or her share of the public tax burden, including the actual cash-sale value in the property's locality.⁸

Definitions:

"Full value," under a tax statute requiring that property be valued at its full value, is synonymous with "fair market value," which is the value reflected by an arm's-length sale on the open market between an owner willing but not obliged to sell and a buyer willing but not obliged to buy.⁹ The "true value" of real property for tax purposes is the amount for which that property would sell on the open market by a willing seller to a willing buyer.¹⁰ "Fair market value" is the present actual value of the land with all its adaptations to general and special uses and not its prospective, speculative, or possible value, based on future expenditures and improvements.¹¹

The price paid for property in an arm's-length transaction, while not conclusive, is relevant evidence of its true and actual value,¹² particularly a recent sale.¹³ Other factors can affect the use of the sale price of property as evidence of its true value, including the mode of payment, sale/lease arrangements, and abnormal economic conditions.¹⁴ Excluding the value of intangibles is critical to the legitimacy of any method used to value property for real estate taxation purposes.¹⁵ Thus, under some statutes, the market value is not the sole factor to be considered, and an assessor is not restricted to a consideration of the sale price of realty sold at approximately the same time that the assessment valuation was made.¹⁶

Other elements that are to be taken into consideration include the capacity of the real estate for improvement and, in the case of farm land, its fertility; the minerals in its soil; its location; the configuration of its surface; and other circumstances incident to the land which affect its value.¹⁷ The absence of an actual market for a particular type of property does not mean that it has no value or that it may escape from the constitutional mandate that all property be taxed in proportion to its value but only that the assessor must then use such pertinent factors as replacement costs and income analyses for determining valuation.¹⁸

For ad valorem tax purposes, the actual value of improved real estate is arrived at by considering all various circumstances that affect the property, including the existence of long-term leases.¹⁹ Ignoring the effect of a lease on the judgment of the purchaser in the estimation of the fair market value would ignore the requirement that the property be valued at its actual value.²⁰ A property tax assessor must have the ability to discount, even disregard, factors that do not really bear on the value of a property.²¹ Accordingly, where a lease encumbrance brings the lease rate below the market rate, the assessed value of the property is reduced, corresponding with the reciprocal positive leasehold value to the tenant.²²

CUMULATIVE SUPPLEMENT

Cases:

The trier of fact in a tax abatement case may use any one or a combination of five appraisal techniques in valuing public utility property, including (1) original cost less depreciation (rate base or net book), (2) comparable sales, (3) cost of alternative

facilities, (4) capitalized earnings, and (5) reproduction cost less depreciation; typically all relevant factors must be considered, but a trier of fact need not allocate specific weight to any one of the approaches listed. [Appeal of Public Service Company of New Hampshire](#), 165 A.3d 695 (N.H. 2017).

As a general matter, evidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value of real property for tax purposes, will not alone prove true value. [Shinkle v. Ashtabula Cty. Bd. of Revision](#), 2013-Ohio-397, 985 N.E.2d 1243 (Ohio 2013).

When property has been the subject of a recent arm's-length sale between a willing seller and a willing buyer, the sale price of the property shall be the true value for taxation purposes. R.C. § 5713.03. [Highland Towers Akron, L.L.C. v. Summit Cty. Bd. of Revision](#), 2012-Ohio-4386, 997 N.E.2d 154 (Ohio Ct. App. 9th Dist. Summit County 2012).

Despite the fact-intensive nature of the property valuation process, the relevant statutes and revenue department rules may impose legal constraints on that process, and interpretations of those statutes and rules remain legal issues. [Hewlett-Packard Co. v. Benton County Assessor](#), 357 Or. 598, 356 P.3d 70 (2015).

Environmental stigma, although an inherently imprecise concept, may be relevant to determining fair market value of real estate for tax purposes. 53 Pa.C.S.A. § 8842(b). [Harley-Davidson Motor Co. v. Springettsbury Twp.](#), 124 A.3d 270 (Pa. 2015).

"Fair market value" of real property, for the purposes of a tax assessment, is the present actual value of the land with all its adaptations to general and special uses, and not its prospective, speculative or possible value, based on future expenditures and improvements. [City of Richmond v. Jackson Ward Partners, L.P.](#), 726 S.E.2d 279 (Va. 2012).

For real estate tax purposes, the price paid for property in an arm's length transaction, while not conclusive, is relevant evidence of its true and actual value. [West's Ann.W.Va.Code](#), 11–3–1. [Lee Trace, LLC v. Raynes](#), 751 S.E.2d 703 (W. Va. 2013).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Ford Motor Co. v. Township of Edison](#), 127 N.J. 290, 604 A.2d 580 (1992).
- 2 [W. T. Grant Co. v. Srog](#)i, 52 N.Y.2d 496, 438 N.Y.S.2d 761, 420 N.E.2d 953 (1981).
- 3 [Dowd v. Board of Equalization of Boone County](#), 240 Neb. 437, 482 N.W.2d 583 (1992).
As to net income, see § 644.
- 4 [Muirfield Assn., Inc. v. Franklin Cty. Bd. of Revision](#), 73 Ohio St. 3d 710, 654 N.E.2d 110 (1995).
- 5 [Shawmut Inn v. Inhabitants of Town of Kennebunkport](#), 428 A.2d 384 (Me. 1981).
- 6 [Marquette Bank Nat. Ass'n v. County of Hennepin](#), 589 N.W.2d 301 (Minn. 1999).
- 7 [Yusem v. Town of Raymond](#), 2001 ME 61, 769 A.2d 865 (Me. 2001); [Boivin v. Town of Addison](#), 188 Vt. 571, 2010 VT 67, 5 A.3d 897 (2010).
- 8 [Kimbrough v. Idaho Bd. of Tax Appeals](#), 150 Idaho 417, 247 P.3d 644 (2011).
- 9 [ABKA Ltd. Partnership v. Board of Review of Village of Fontana-On-Geneva Lake](#), 231 Wis. 2d 328, 603 N.W.2d 217 (1999).
- 10 [Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision](#), 113 Ohio St. 3d 281, 2007-Ohio-1948, 865 N.E.2d 22 (2007).
- 11 [West Creek Associates, LLC v. County of Goochland](#), 276 Va. 393, 665 S.E.2d 834 (2008).
- 12 [Eastern American Energy Corp. v. Thorn](#), 189 W. Va. 75, 428 S.E.2d 56 (1993) (overruled on other grounds by, [In re Tax Assessment of Foster Foundation's Woodlands Retirement Community](#), 223 W. Va. 14, 672 S.E.2d 150 (2008)).

The uniform rule in real property taxation is that property should be valued in accordance with an actual sale price where the criteria of the recency and the arm's-length character of the sale are satisfied; where there is no such sale, the uniform rule envisions that an appraisal will be prepared, and constitutional uniformity does not prohibit the differential treatment of encumbrances when property is being appraised in materially different contexts. [Woda Ivy Glen Ltd. Partnership v. Fayette Cty. Bd. of Revision](#), 121 Ohio St. 3d 175, 2009-Ohio-762, 902 N.E.2d 984 (2009).

The sale of commercial property in an arm's-length transaction represented value for real estate tax purposes even though an easement allowed customers of an adjacent store to park on the property. [Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision](#), 118 Ohio St. 3d 45, 2008-Ohio-1588, 885 N.E.2d 934 (2008).
[Quoddy Realty Corp. v. City of Eastport](#), 1998 ME 14, 704 A.2d 407 (Me. 1998).

The best information of fair market value for purposes of a property tax assessment is a recent sale of the property at issue. [U.S. Oil Co., Inc. v. City of Milwaukee](#), 331 Wis. 2d 407, 2011 WI App 4, 794 N.W.2d 904 (Ct. App. 2010).

[Somers v. City of Meriden](#), 119 Conn. 5, 174 A. 184, 95 A.L.R. 434 (1934) (extended lease); [Zazworsky v. Licking Cty. Bd. of Revision](#), 61 Ohio St. 3d 604, 575 N.E.2d 842 (1991).

[Post-Newsweek Cable, Inc. v. Board of Review of Woodbury County](#), 497 N.W.2d 810 (Iowa 1993).

[Muirfield Assn., Inc. v. Franklin Cty. Bd. of Revision](#), 73 Ohio St. 3d 710, 654 N.E.2d 110 (1995).

[City of Cleveland v. Cuyahoga County Bd. of Revision](#), 96 Ohio App. 483, 55 Ohio Op. 55, 115 N.E.2d 690 (8th Dist. Cuyahoga County 1953).

[Bret Harte Inn, Inc. v. City and County of San Francisco](#), 16 Cal. 3d 14, 127 Cal. Rptr. 154, 544 P.2d 1354 (1976).

[City and County of Denver v. Board of Assessment Appeals of State of Colo.](#), 848 P.2d 355 (Colo. 1993).

[City and County of Denver v. Board of Assessment Appeals of State of Colo.](#), 848 P.2d 355 (Colo. 1993).

[Walgreen Co. v. City of Madison](#), 2008 WI 80, 311 Wis. 2d 158, 752 N.W.2d 687 (2008).

[Walgreen Co. v. City of Madison](#), 2008 WI 80, 311 Wis. 2d 158, 752 N.W.2d 687 (2008).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 649

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

B. Real Property and Interests Therein

1. In General

§ 649. Comparison of methods for valuation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2514

A.L.R. Library

[Requirement of full-value real property taxation assessments, 42 A.L.R.4th 676](#)

[Sale price of real property as evidence in determining value for tax assessment purposes, 89 A.L.R.3d 1126](#)

There are multiple approaches to the valuation of property for tax purposes.¹ A taxing authority is allowed to choose a reasonable method for determining the full and true value of a property so long as there was no fraud or clear adoption of a fundamentally wrong principle of valuation; provided that a method is not fundamentally wrong, it does not even need to be recognized by the appraisal community.²

In the comparable sales method of valuing property for tax assessment purposes, sound theory and objective data may be used to adjust the evidence of the sales of comparable properties in order to more accurately reflect the market value of the subject property, and even evidence of past sales may need adjustment in light of any changes which may have taken place in the market for the property.³ The comparable lease income method of determining market rent and capitalizing it is acceptable for valuing

owner-occupied property and determining real estate taxes.⁴ However, by its very definition, in the comparable sales method of valuing property for tax assessment purposes, a comparable sale need not be identical to the subject property.⁵

The actual value of real property for tax purposes may be determined using the market approach, which considers sales of similar properties.⁶ The market value approach provides the most valuable valuation for assessment purposes, but where there is no reliable market data, other methods are available, such as the capitalization of income method, which is utilized in valuing rental property, and the reproduction cost less depreciation method, which is utilized when the subject property may properly be characterized as a specialty property.⁷ The fair market value is commonly defined as the amount that the property could be sold for in the open market by an owner willing and able but not compelled to sell to a purchaser willing and able but not obliged to buy.⁸ The fair market value of property for tax purposes is a question of fact, the determination of which is primarily within the province of the taxing authorities, and the court will not disturb a decision of the board of tax appeals with respect to such valuation unless it affirmatively appears from the record that such decision is unreasonable or unlawful.⁹

The cost approach to property valuation for tax purposes is an attempt to determine the market costs of the property by analyzing the market costs to construct a similar property.¹⁰ The cost approach is based on the proposition that an informed buyer would pay no more for the property than the cost of constructing new property having the same utility as the subject property.¹¹ Under the cost approach to assess the market value of real property for tax purposes, the appraiser determines the current cost of constructing the existing improvements on the property, subtracts depreciation to determine the current value of the improvements, and then adds the value of the land to determine the market value.¹²

Although different formulas may be employed in determining the cash or market value of different types of property, such as mines, utilities, railroads, personal residences, etc., for the purposes of taxation, each formula must be reasonably designed to achieve that result.¹³ However, it is not necessary in an overvaluation or inequality case to allege in the complaint that the assessor used the wrong method to establish the value of property because a board of assessment review should be charged with the knowledge of the proper method of valuation.¹⁴ The critical inquiry in determining whether an ad valorem tax assessment method produces true values is whether the tax appraisal methodology adopted by the tax appraiser is the proper means or methodology given the characteristics of the property under appraisal to produce a true value or fair market value.¹⁵

Although combinations of incompatible theories of property valuation for tax purposes should be avoided, pragmatism requires adjustment when economic realities prevent placing properties in neat logical valuation boxes.¹⁶

CUMULATIVE SUPPLEMENT

Cases:

Although several methods of valuing real property are acceptable, the market value method of valuation is preferred as the most reliable measure of a property's full value for tax assessment purposes because the best evidence of value, of course, is a recent sale of the subject property between a seller under no compulsion to sell and a buyer under no compulsion to buy; the scope of a "market" need not be limited to the locale of the subject property and, depending on the nature of the use, it may encompass national and/or international buyers and sellers. [Rite Aid Corp. v. Haywood](#), 130 A.D.3d 1510, 2015 WL 4139266 (4th Dep't 2015), leave to appeal denied, 2015 WL 5769987 (N.Y. App. Div. 4th Dep't 2015).

To prove that it acted properly in valuing a bond transaction leasehold estate, a taxing authority must demonstrate that the valuation method used was neither arbitrary nor unreasonable; it may make such a showing through evidence establishing that its valuation method followed an authorized appraisal approach, that is, an approach that takes into account factors such as the

terms and conditions of the lease, the nature and location of the property involved, the fair market value of similarly leased property, and the prevailing rents in the area. [Sherman v. Development Authority of Fulton County, 739 S.E.2d 457 \(Ga. Ct. App. 2013\)](#).

Tax court did not impermissibly choose an entirely new methodology in adjusting sales price for comparable property to account for traffic and location in determining market value of big-box retail property based on sales approach to support tax assessment, where tax court used experts conflicting evidence to arrive at a value within proposed range of land-value prices proffered by county's expert. [Lowe's Home Centers, LLC \(Plymouth\) v. County of Hennepin, 938 N.W.2d 48 \(Minn. 2020\)](#).

Tax court did not abuse its discretion when it gave 70% weight to the income approach and 30% weight to the sales-comparison approach when determining the market value of taxpayer's shopping center, where taxpayer failed to present any argument to lead the Supreme Court to the firm conviction that the weights used by the tax court were incorrect. [KCP Hastings, LLC v. County of Dakota, 931 N.W.2d 773 \(Minn. 2019\)](#).

Trial court's inclusion of comparable sales transaction under sales comparison approach for valuating taxpayer's home improvement retail store for property tax purposes was not clearly erroneous, despite claim that transaction had severe use restrictions in place; while county's expert appraiser proposed 75 percent adjustment and taxpayer's appraiser proposed 5 percent adjustment, court considered both experts' testimony and evidence, rejected county's expert appraiser's speculation about effect of limited-use restriction in warranty deed for transaction, and determined that 15 percent adjustment adequately reflected constraint imposed by restriction, which was limited in both scope and duration. [Menard, Inc. v. County of Clay, 886 N.W.2d 804 \(Minn. 2016\)](#).

Application of multiple approaches to determine market value is usually appropriate and necessary in property tax proceedings because the alternative value indications derived can serve as useful checks on each other; however, neither judicial nor statutory law mandates the tax court give weight to all three valuation approaches: income, sales-comparison, and cost. [KCP Hastings, LLC v. County of Dakota, 868 N.W.2d 268 \(Minn. 2015\)](#).

While it would have been helpful if the tax court had carefully explained its decision to reject a percentage of sales method analysis in favor of an analysis of market comparables in calculating department store property's fair market rent for purposes of property tax assessment, the tax court's market rent determination was not clearly erroneous, where the adjusted market rent proposed by the store operator was \$5 to \$6 per square foot, while the county concluded that \$7.10 per square foot was appropriate, and the tax court assigned a market rent of \$6.25 per square foot. [Kohl's Dept. Stores, Inc. v. County of Washington, 834 N.W.2d 731 \(Minn. 2013\)](#).

Recent arm's length sale of subject property is the best evidence of value for tax assessment purposes; however, absent that, the traditional valuation methods are comparable sales, income capitalization, and reproduction costs. [Lowe's Home Centers, Inc. v. Board of Assessment Review, 106 A.D.3d 1306, 965 N.Y.S.2d 657 \(3d Dep't 2013\)](#).

Taxpayer's appraisal using comparable sales approach in challenging property tax assessments levied on three of the 19 parkland parcels it owned was competent, even though property was appraised in components and not as a whole; appraiser considered the divergent mix of uses and features on the 19 parcels, concluded that there were no recent comparable sales of large tracts of land with a similar combination of characteristics and current uses, and included a statement of the method of appraisal employed, and the facts and figures upon which appraisal's conclusions were based. [McKinney's RPTL § 700 et seq.; N.Y.Ct.Rules, § 202.59\(g\)\(2\). Adirondack Mountain Reserve v. Board of Assessors of Town of North Hudson, 106 A.D.3d 1232, 966 N.Y.S.2d 532 \(3d Dep't 2013\)](#).

In substantially relying on cost approach to make ad valorem tax assessment of taxpayer's real commercial property, county used an arbitrary and illegal method; property was held by taxpayer to facilitate production of income, and this was the property's highest and best use, and relying on the cost approach to valuation might have established a ceiling on property's valuation, but

consideration should have been given to the income and comparable sales approaches to establish a true value. [N.C. Gen. Stat. Ann. § 105-317. Matter of Lowe's Home Centers, LLC, 810 S.E.2d 713 \(N.C. Ct. App. 2018\).](#)

In determining whether a county's appraisal method was the proper means or methodology given the characteristics of the property, for the purposes of assessing ad valorem tax, the use of schedules of values and rules of application not only makes the valuation of a substantial number of pieces of property feasible, but also ensures objective and consistent countywide property valuations and corollary equity in property tax liability; nevertheless, use of a schedule alone does not prove that the valuation and assessment of the subject property was itself not arbitrary. West's [N.C.G.S.A. § 105-291\(g\). In re Interstate Outdoor Inc., 763 S.E.2d 172 \(N.C. Ct. App. 2014\).](#)

Board of Tax Appeals (BTA) was not required to consider property owner's unsuccessful attempts to sell property for value lower than county appraiser's valuation as evidence that the property's true value was less than the appraiser's valuation. [Olentangy Local Schools Board of Education v. Delaware County Board of Revision, 152 Ohio St. 3d 331, 2017-Ohio-8843, 96 N.E.3d 228 \(2017\).](#)

Sale price of real property for purposes of property tax valuation was \$900,000, which was the base amount of purchase price under lease containing an option to purchase, rather than \$951,776, which was amount paid by taxpayer upon its exercise of the option, but which included taxpayer's back-rent obligations; the additional \$51,776 pertained to rent concessions and would have been paid whether or not taxpayer had purchased the property, and, to the extent it was necessary to conceive of the additional amount as consideration for an asset, the back-rent elements of the purchase price constituted a settlement and discharge between lessor and lessee that became necessary because of the exercise of the purchase option. [Ohio Rev. Code Ann. § 5713.03. Orange City School District Board of Education v. Cuyahoga County Board of Revision, 152 Ohio St. 3d 325, 2017-Ohio-8817, 96 N.E.3d 223 \(2017\).](#)

Comparable sales analysis approach for determining fair market value of a hydroelectric facility for property tax purposes considers the prices at which comparable properties were sold on the open market, divided by either the rated or nameplate capacity, or by the reported annual generation, which is then adjusted to extrapolate for the subject property, taking into account qualitative and quantitative differences between that property and those selected as comparable; the method estimates price per capacity, that is, price per kilowatt hour per year, or kwh-yr, which can be used to estimate the fair market value based on annual generation. [TransCanada Hydro Northeast, Inc. v. Town of Rockingham, 2016 VT 100, 154 A.3d 486 \(Vt. 2016\).](#)

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Crown Paper Co. v. City of Berlin, 142 N.H. 563, 703 A.2d 1387 \(1997\).](#)
- 2 [Horan v. Kenai Peninsula Borough Bd. of Equalization, 247 P.3d 990 \(Alaska 2011\).](#)
- 3 [FMC Corp. \(Peroxygen Chemicals Div.\) v. Unmack, 92 N.Y.2d 179, 677 N.Y.S.2d 269, 699 N.E.2d 893 \(1998\).](#)
- 4 [Saratoga Harness Racing Inc. v. Williams, 91 N.Y.2d 639, 674 N.Y.S.2d 263, 697 N.E.2d 164 \(1998\).](#)
- 5 [FMC Corp. \(Peroxygen Chemicals Div.\) v. Unmack, 92 N.Y.2d 179, 677 N.Y.S.2d 269, 699 N.E.2d 893 \(1998\).](#)
- 6 [Gilpin County Bd. of Equalization v. Russell, 941 P.2d 257 \(Colo. 1997\), as modified on denial of reh'g, \(Aug. 11, 1997\); Eden Prairie Mall, LLC v. County of Hennepin, 797 N.W.2d 186 \(Minn. 2011\).](#)
- 7 [Great Atlantic & Pac. Tea Co., Inc. v. Kiernan, 42 N.Y.2d 236, 397 N.Y.S.2d 718, 366 N.E.2d 808 \(1977\).](#)
- 8 [State ex rel. Levine v. Board of Review of Village of Fox Point, 191 Wis. 2d 363, 528 N.W.2d 424 \(1995\).](#)
- 9 [Consolidated Aluminum Corp. v. Monroe County Bd. of Revision, 66 Ohio St. 2d 410, 20 Ohio Op. 3d 357, 423 N.E.2d 75 \(1981\).](#)

- 10 EOP-Nicollet Mall, L.L.C. v. County of Hennepin, 723 N.W.2d 270 (Minn. 2006).
11 Eden Prairie Mall, LLC v. County of Hennepin, 797 N.W.2d 186 (Minn. 2011).
12 Continental Retail, LLC v. County of Hennepin, 801 N.W.2d 395 (Minn. 2011).
13 Kennecott Copper Corp. v. Salt Lake County, 799 P.2d 1156 (Utah 1990).
14 Extrom v. Town of Skaneateles, 112 A.D.2d 35, 490 N.Y.S.2d 942 (4th Dep't 1985).
15 In re Parkdale America, 710 S.E.2d 449 (N.C. Ct. App. 2011).
16 G.R.F., Inc. v. Board of Assessors of Nassau County, 41 N.Y.2d 512, 393 N.Y.S.2d 965, 362 N.E.2d 597 (1977).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 650

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

B. Real Property and Interests Therein

1. In General

§ 650. Income or rental value

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2521

A.L.R. Library

[Income or rental value as a factor in evaluation of real property for purposes of taxation, 96 A.L.R.2d 666](#)

Trial Strategy

[Overassessment of Income-Producing Property—Neighborhood Shopping Center, 3 Am. Jur. Proof of Facts 2d 1](#)

When valuing property for tax purposes, the establishment of a net operating income requires a determination of the property's economic rent, or fair rental value, plus miscellaneous and additional income.¹

For example, property leased as a gasoline station and automobile repair facility should have been valued by considering the net ground lease rent rather than using the gallons of gasoline pumped annually as a basis for determining value since gallonage

figures reflected the business conducted on the property rather than the value thereof.² The income from a resort owner's management of rental condominiums was inextricably intertwined with the resort property and, thus, was properly included in assessing the value of the property for tax purposes.³ The management was transferable to units' future owners, and the resort owner advertised condominium rentals, allowed renters to use resort amenities, and provided reservation, check-in, and housekeeping services in return for 50% of the rental fees.⁴

CUMULATIVE SUPPLEMENT

Cases:

Court could not disregard sale of commercial real property, which was leased and used by retail drugstore chain, in determining market value, or disregard the actual rent paid by lessee, in arriving at value using the income capitalization method, for purpose of determining property tax assessments on the property; it was undisputed that sale was an arm's length transaction which occurred only a few years before the tax assessments, sale price was comparable to nationwide sales of other occupied national chain drug store locations, and actual rent paid by lessee was comparable to rent paid by lessees in other national chain drug store locations. [McKinney's RPTL § 302\(1\)](#). [Rite Aid Corp. v. Huseby](#), 130 A.D.3d 1518, 2015 WL 4139288 (4th Dep't 2015).

Because it is the future income stream that is relevant to the income method for valuing real property for tax assessment, the income approach may be appropriate where the subject property is not currently income producing. 18 CCR § 3(e). [Assessor for County of Santa Barbara v. Assessment Appeals Bd. No. 1](#), 141 Cal. Rptr. 3d 290 (Cal. App. 2d Dist. 2012), reh'g granted, opinion not citeable, (June 13, 2012).

Preponderance of the evidence supported Tax Commission's determination that income approach was appropriate method for determining the fair market value of affordable rental housing complex, where written report by Commission's staff appraiser stated that income approach was the most reliable indicator of value for income-producing properties, and that sales-comparison approach was inappropriate in light of inherent restrictions on income return and the inability of property owners to sell without express approval of federal government after certain regulatory requirements had been satisfied and fact that there were no sales of similar complexes found within the entire state which could be used as comparables to complex. [Williams v. Opportunity Homes Limited Partnership](#), 240 So. 3d 161 (La. 2018).

County's use of capitalization of income approach was appropriate in making valuation of real estate that comprised one tax parcel but was divided as the result of a lease into leased fee and long-term leasehold interests that each generated income to taxpayer, where valuation specifically considered aggregate value of both interests and impact of ownership division and rest restrictions created by lease. 72 P.S. § 5020-402. [Tech One Associates v. Board of Property Assessment, Appeals and Review of Allegheny County](#), 53 A.3d 685 (Pa. 2012).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [First Republic Corp. of America v. East Newark Borough](#) Newark, 17 N.J. Tax 531, 1998 WL 870441 (Super. Ct. App. Div. 1998).
- 2 [Humble Oil & Refining Co. v. Borough of Englewood Cliffs](#), 135 N.J. Super. 26, 342 A.2d 560 (App. Div. 1975), judgment aff'd, 71 N.J. 401, 365 A.2d 929 (1976).
- 3 [ABKA Ltd. Partnership v. Board of Review of Village of Fontana-On-Geneva Lake](#), 231 Wis. 2d 328, 603 N.W.2d 217 (1999).

4 [ABKA Ltd. Partnership v. Board of Review of Village of Fontana-On-Geneva Lake, 231 Wis. 2d 328, 603 N.W.2d 217 \(1999\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 651

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

B. Real Property and Interests Therein

1. In General

§ 651. Specialty property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2521

A structure does not qualify as a special purpose property, for real estate tax purposes, simply because it was built for a particular purpose.¹ Rather, a "special purpose property" is one that, due to its unique function or design, is not likely to be sold on the market and cannot readily be converted to other uses without a large capital investment or a substantial loss in investment value of the property's special features,² such as a public museum, church, or a highly specialized production facility such as a brewery.³

Four criteria for determining whether a specialty property exists, for the purposes of valuing property for tax purposes, are that: (1) the improvement be unique and be specially built for a specific purpose for which it was designed; (2) there be a special use for which the improvement is designed and the improvement be specially used; (3) there be no market for the type of property and no sales of property for such use; and (4) the improvement be an appropriate improvement at the time of taking or the assessment and that its use be economically feasible and reasonably expected to be replaced.⁴

CUMULATIVE SUPPLEMENT

Cases:

"Special-purpose property" doctrine did not apply to 11,000 square foot drugstore in determining the value of the property for tax purposes, and thus, Board of Tax Appeals was justified in rejecting county's appraisal of property which assumed drug store

would be the continuing tenant, even after a putative sale; rather, property owner's appraisal assuming a retail store would be the general type of use to be made of the property, was the appropriate valuation approach. [Rite Aid of Ohio, Inc. v. Washington Cty. Bd. of Revision](#), 146 Ohio St. 3d 173, 2016-Ohio-371, 54 N.E.3d 1177 (2016).

Highest and best use of a property being continued use as national fast-food restaurant, rather than broader use as a restaurant, did not define the property as a special-purpose property, in property owner's challenge to county auditor's valuation of the property; use of the property at time of valuation was as a national fast-food restaurant and designation of highest and best use as such did not limit property's use to only particular brand of fast-food restaurant that operated at time of valuation. [Groveport Madison Local Schools Board of Education v. Franklin County Board of Revision](#), 2018-Ohio-4620, 124 N.E.3d 341 (Ohio Ct. App. 10th Dist. Franklin County 2018).

Section of real property tax valuation statute requiring municipal listers, in valuing residential property subject to a housing-subsidy covenant, to include "a consideration of a decrease in value" from such a covenant, does not compel a so-called automatic reduction in property tax valuation for all parcels subject to a housing-subsidy covenant, but instead demands an individualized consideration of the effect a particular covenant has on a property's fair market value. 32 V.S.A. § 3481. [Franks v. Town of Essex](#), 2013 VT 84, 87 A.3d 418 (Vt. 2013).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [American Exp. Financial Advisors, Inc. v. County of Carver](#), 573 N.W.2d 651 (Minn. 1998).
- 2 [American Exp. Financial Advisors, Inc. v. County of Carver](#), 573 N.W.2d 651 (Minn. 1998).
- 3 [Ford Motor Co. v. Township of Edison](#), 127 N.J. 290, 604 A.2d 580 (1992).
- 4 [Allied Corp. v. Town of Camillus](#), 80 N.Y.2d 351, 590 N.Y.S.2d 417, 604 N.E.2d 1348 (1992).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 652

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

B. Real Property and Interests Therein

1. In General

§ 652. Prospective value

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2514

When evaluating property wealth for the purpose of assessment and taxation, the taxing authority may focus upon the taxpayer's actual use of the land and improvements rather than the possible uses which potential purchasers might choose.¹ The owner may not see fit to improve his or her land at all, or the owner may put it to uses which are much less profitable than others for which it is suited, but the owner cannot thereby lessen its valuation for the purposes of taxation.² Normally, unimproved or undeveloped property is valued for tax purposes using only the market approach to value rather than the replacement cost or capitalization of income approach.³

Practice Tip:

To lay a proper foundation for the admission of the evidence of the market value of undeveloped property based on the development cost approach analysis, the offering party must show that the land is ripe for development, that the owner can reasonably expect to secure necessary zoning and other permits required for development to take place, and that development will not take place at too remote a time.⁴

CUMULATIVE SUPPLEMENT

Cases:

Issue of fact as to whether procedure for obtaining club membership was inextricably bound with sale of quarter ownership interests in condominium units precluded summary judgment for taxpayer on appeal of assessment, based on county's refusal to exclude value of club membership rights from comparable sales price used to value subject properties. [Glynn County Board of Assessors v. SIA Propco I, LLC](#), 351 Ga. App. 103, 830 S.E.2d 403 (2019).

In appraising property for purposes of ad valorem taxation, highest and best use of tract of land was for operation of casino, where taxpayer was hired by state pursuant to Expanded Lottery Act as gaming facility manager via management contract to construct and own casino improvements and infrastructure and manage gaming operations, and no other entity was permitted to build a casino in south central gaming zone. West's [K.S.A. 74-8734\(h\)\(17\)](#), 79-501. [In re Equalization Appeal of Kansas Star Casino, L.L.C.](#), 362 P.3d 1109 (Kan. Ct. App. 2015).

Valuing a property at its highest and best use means identifying the reasonably probable and legal use of vacant land or an improved property that is legally permissible, physically possible, appropriately supported, financially feasible, and that results in the highest value. [South-Western City Schools Board of Education v. Franklin County Board of Revision](#), 2018-Ohio-4622, 128 N.E.3d 757 (Ohio Ct. App. 10th Dist. Franklin County 2018).

The revenue department requires valuing property according to its highest and best use because a seller can expect to receive the highest offer from a prospective buyer who intends to put the property to its most profitable use. [Hewlett-Packard Co. v. Benton County Assessor](#), 357 Or. 598, 356 P.3d 70 (2015).

The potential impact of a settlement agreement regarding environmental remediation and ongoing limitations and maintenance as a by-product thereof, through a buyer-seller agreement, are relevant factors that must be taken into account when valuing property for tax purposes. [53 Pa.C.S.A. § 8842\(b\)](#). [Harley-Davidson Motor Co. v. Springettsbury Twp.](#), 124 A.3d 270 (Pa. 2015).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [State Bd. of Tax Com'rs v. Town of St. John](#), 702 N.E.2d 1034 (Ind. 1998).
- 2 [Slatersville Finishing Co. v. Greene](#), 40 R.I. 410, 101 A. 226 (1917).
- 3 [Hansen v. County of Hennepin](#), 527 N.W.2d 89 (Minn. 1995).
- 4 As to methods for valuation, see [§ 649](#).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 653

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

B. Real Property and Interests Therein

1. In General

§ 653. Prospective value—Undeveloped mines and minerals

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2514

The whole property, including the known underlying minerals, is to be valued according to its market or selling value.¹ Accordingly, an added value may be given real estate for purposes of taxation where there is sufficient reason to believe that the property contains mineral deposits in sufficient quantity to give it a value as a prospective mine.² However, the true value of mining claims, for the purposes of property taxation, can only be approximated³ because the value of mining property lies in unmined ore which can only be approximated and cannot be calculated with absolute certainty or mathematical precision.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Kennecott Copper Corp. v. Salt Lake County](#), 799 P.2d 1156 (Utah 1990).
- ² [Interstate Coal & Iron Co. v. Commonwealth](#), 103 Va. 586, 49 S.E. 974 (1905).
- ³ [Huddleston v. Grand County Bd. of Equalization](#), 913 P.2d 15 (Colo. 1996).
- ⁴ [Huddleston v. Grand County Bd. of Equalization](#), 913 P.2d 15 (Colo. 1996).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 654

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

B. Real Property and Interests Therein

1. In General

§ 654. Improvements

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2518

All fixed and permanent building and other improvements on land are a part of it for the purposes of assessment and must be included in its appraised value for taxation.¹ Land and improvements can be valued separately for tax assessment purposes.² Individual tax assessments of real property may be based upon the property's actual value, which may be determined using the market approach, and may consider sales of similar properties, but the actual value also obligates the assessor to consider the specific attributes of each property's improvements, including the assigned quality grade, to determine the property's individual worth.³ The board of tax appeals can reject testimony of the property owners' appraiser concerning the value of the improvements to land.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ First Federal Sav. & Loan Ass'n of Flint v. City of Flint, 415 Mich. 702, 329 N.W.2d 755 (1982).
- ² U.S. v. Metropolitan Government of Nashville and Davidson County, Tenn., 808 F.2d 1205 (6th Cir. 1987).
- ³ Arapahoe County Bd. of Equalization v. Podoll, 935 P.2d 14 (Colo. 1997).
- ⁴ Soin v. Greene Cty. Bd. of Revision, 110 Ohio St. 3d 408, 2006-Ohio-4708, 853 N.E.2d 1165 (2006).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 655

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

B. Real Property and Interests Therein

1. In General

§ 655. Reproduction or replacement costs

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2516

Trial Strategy

[Valuation of Structure Based on Reproduction or Replacement Cost, 8 Am. Jur. Proof of Facts 2d 399](#)

Not only may the original cost of construction be considered in determining the valuation for purposes of taxation of improved real estate but it is also well settled that apart from statutory requirements to the contrary, the reproduction cost of the improvements may be a proper factor for consideration, the theory being in this regard that while the reproduction cost is not the final test, it is, or may be, a criterion of present value when allowance is made for depreciation.¹

Definition:

The "reproduction cost," for real estate tax purposes, is the estimated cost to construct an exact replica of the subject property using the same materials, standards, design, and layout and embodying all the deficiencies and obsolescence of the subject building.²

Normally, unimproved or undeveloped property is valued for tax purposes using only the market approach to value rather than the replacement cost or capitalization of income approach.³ The replacement cost is generally lower and may provide a better indication of the current value, for real estate tax purposes, than the reproduction cost because it does not embody obsolescent features which would not be constructed in a new building.⁴ However, the reproduction cost can be adjusted to account for functional obsolescence through appropriate deductions.⁵ The reproduction cost new less depreciation approach is a type of cost approach in which one estimates the current cost of constructing a reproduction of the subject matter and then subtracts the amount of depreciation, that is, deterioration and obsolescence in the structure from all causes.⁶ The reproduction cost less depreciation approach to valuation which, among other things, ignores entirely factors like functional obsolescence is useful principally, apart from specialities, to set a ceiling on valuation for property tax purposes.⁷ Thus, reproduction costs should be utilized only in those limited instances in which no other method of valuation will yield a legally and economically realistic value for property.⁸

CUMULATIVE SUPPLEMENT

Cases:

When a property is of such unique nature that its market value literally cannot be quantified, an appraiser may resort to the reproduction cost method to determine valuation of property for tax purposes. [Gateway-Walden, LLC v. Pappas, 2018 IL App \(1st\) 162714, 430 Ill. Dec. 921, 127 N.E.3d 157 \(App. Ct. 1st Dist. 2018\).](#)

The sales-comparison approach of assessing the value of real property is the preferred method, but each of the approaches, including the income approach and the reproduction cost approach, should be utilized where reliable information is available to serve as a check on the value. [Board of Educ. of Ridgeland School Dist. No. 122, Cook County v. Property Tax Appeal Bd., 2012 IL App \(1st\) 110461, 363 Ill. Dec. 461, 975 N.E.2d 263 \(App. Ct. 1st Dist. 2012\).](#)

The cost approach for determining market value of real property for tax purposes estimates value by finding the current cost to construct a new facility with the same features as the subject property. [Minn. Stat. Ann. §§ 272.03\(8\), 273.11\(1\). Inland Edinburgh Festival, LLC v. County of Hennepin, 938 N.W.2d 821 \(Minn. 2020\).](#)

For property tax purposes, the cost approach, which is normally relied on to value special purpose property or unique structures for which there is no market, has two elements: land value and the reproduction or replacement cost of the buildings and other improvements; from the estimated reproduction cost is deducted depreciation from all causes. [Marina District Development Co., LLC v. City of Atlantic City, 27 N.J. Tax 469, 2013 WL 6729781 \(2013\).](#)

Tax court was not required to consider cost approach performed by Department of Revenue's appraiser, in court's determination of real market value of taxpayer's real property pursuant to the especial property rule, where court explicitly found, when evaluating taxpayer's appraisal, that income approach was the more correct approach to valuation. [Or. Rev. Stat. § 308.205\(2\) \(c\); OAR 150–308.205–\(A\)\(3\). Department of Revenue v. River's Edge Investments, LLC, 359 Or. 822, 377 P.3d 540 \(2016\).](#)

For purposes of determining real market value of property for property tax assessment purposes, "value of the loss" is generally the excess operating costs that an owner will incur as the result of inefficiencies in the property that prevent the property from

cost-effectively serving its highest and best use. OAR 150–308.205–(F)(3)(k). [Hewlett-Packard Co. v. Benton County Assessor](#), 357 Or. 598, 356 P.3d 70 (2015).

The "cost approach" to valuing property for tax purposes considers reproduction or replacement costs of the property, less depreciation and obsolescence. 53 Pa.C.S.A. § 8842(b)(1)(iii). [In re Springfield School Dist.](#), 101 A.3d 835 (Pa. Commw. Ct. 2014).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Bornstein v. State Tax Commission](#), 227 Md. 331, 176 A.2d 859, 96 A.L.R.2d 661 (1962).
- 2 [American Exp. Financial Advisors, Inc. v. County of Carver](#), 573 N.W.2d 651 (Minn. 1998).
- 3 [Hansen v. County of Hennepin](#), 527 N.W.2d 89 (Minn. 1995).
- 4 [American Exp. Financial Advisors, Inc. v. County of Carver](#), 573 N.W.2d 651 (Minn. 1998).
As to obsolescence, see § 662.
- 5 [American Exp. Financial Advisors, Inc. v. County of Carver](#), 573 N.W.2d 651 (Minn. 1998).
As to deductions for obsolescence, see § 662.
- 6 [Boston Gas Co. v. Board of Assessors of Boston](#), 458 Mass. 715, 941 N.E.2d 595 (2011).
- 7 [G.R.F., Inc. v. Board of Assessors of Nassau County](#), 41 N.Y.2d 512, 393 N.Y.S.2d 965, 362 N.E.2d 597 (1977).
- 8 [Great Atlantic & Pac. Tea Co., Inc. v. Kiernan](#), 42 N.Y.2d 236, 397 N.Y.S.2d 718, 366 N.E.2d 808 (1977).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 656

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

B. Real Property and Interests Therein

1. In General

§ 656. Particular constitutional and statutory provisions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2521

Whether or not the original cost of construction and reproduction costs are factors in determining the valuation of real estate for purposes of taxation frequently depends upon a particular statutory or constitutional provision,¹ and whether a valuation methodology or group of methodologies meets the constitutional and statutory test of excluding intangibles from the valuation of property is a legal question.² A legal conclusion about the constitutional and statutory propriety of a particular property valuation must be premised on the feasibility of separating tangible from intangible property within the particular context at issue, which in turn must be balanced against the accuracy with which any given valuation methodology captures the fair market value of the property.³

Observation:

The use of cost factors as the basis of a scheme for determining the full cash value of assessed property is not intrinsically arbitrary, and a cost-less-depreciation valuation method may, in many instances, indicate accurately the amount that the property would bring to its owner if it were offered for sale on an open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other, but such a method, if it is to yield results consistent with the constitutional command that all property subject to taxation be assessed at full cash value, must be designed so that cost factors, which by their nature can have no direct

relationship to present value, are modulated by depreciation factors in a manner reasonably calculated to achieve an approximation of such value with respect to the individual taxpayer.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Appeal of Pennsylvania Stave Co., 236 Pa. 97, 84 A. 761 \(1912\).](#)
- 2 [Utah Railway Co. v. Utah State Tax Com'n, 2000 UT 49, 5 P.3d 652 \(Utah 2000\).](#)
- 3 [Utah Railway Co. v. Utah State Tax Com'n, 2000 UT 49, 5 P.3d 652 \(Utah 2000\).](#)
- 4 [Bret Harte Inn, Inc. v. City and County of San Francisco, 16 Cal. 3d 14, 127 Cal. Rptr. 154, 544 P.2d 1354 \(1976\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 657

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

B. Real Property and Interests Therein

1. In General

§ 657. Leasehold interests

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2519

A.L.R. Library

[Property tax: effect of tax exempt lessor's reversionary interest on valuation of nonexempt lessee's interest, 57 A.L.R.4th 950](#)

The market value of a leasehold is to be measured by considering both the benefits to be garnered from the use of the property over the term of the lease and the burdens placed upon it in terms of restrictions which limit its use, indebtedness not being such a burden.¹ The value of the term is fixed with reference to present as well as prospective conditions (not speculative, but actual) its value in money to one who desires to sell but is under no necessity for selling and its value in money to one desirous of buying but is under no compulsion to do so.² Leased property is not to be doubly taxed by assessing both leasehold and fee in such a way that the value of leasehold includes the fee or that the value of the fee includes the leasehold.³ Rather, they should be assessed separately.⁴

CUMULATIVE SUPPLEMENT

Cases:

Tax court had subject-matter jurisdiction over taxpayer's leasehold interest in property that was adjacent and contiguous to the tax parcel on appeal for purposes of determining value of tax parcel, provided that the leasehold constituted real property of the tax parcel. M.S.A. §§ 272.03, 273.12. [Federated Retail Holdings, Inc. v. County of Ramsey, 820 N.W.2d 553 \(Minn. 2012\)](#).

Board of Tax Appeals was required to consider an appraisal of an owner-occupied horse-racing facility as if it were leased, in proceeding regarding the real-property valuation of the facility; a property owner could realize the value of its property by encumbering it with a lease, so that an appraiser could take that possibility into account when valuing it, and appraising the facility as if generating income under a hypothetical lease was consistent with real-estate valuation statute's directive to determine "the true value of the fee simple estate, as if unencumbered," so long as the appraisal assumed a lease that reflected the relevant real-estate market. [Ohio Rev. Code Ann. § 5713.03. Harrah's Ohio Acquisition Company, L.L.C. v. Cuyahoga County Board of Revision, 154 Ohio St. 3d 340, 2018-Ohio-4370, 114 N.E.3d 192 \(2018\)](#).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Pier 67, Inc. v. King County, 78 Wash. 2d 48, 469 P.2d 902 \(1970\)](#).
- 2 [Metropolitan Bldg. Co. v. King County, 62 Wash. 409, 113 P. 1114 \(1911\)](#).
- 3 [Canaveral Port Authority v. Department of Revenue, 690 So. 2d 1226 \(Fla. 1996\)](#).
- 4 [Canaveral Port Authority v. Department of Revenue, 690 So. 2d 1226 \(Fla. 1996\)](#).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 658

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

B. Real Property and Interests Therein

1. In General

§ 658. Leasehold interests—Oil and gas leases

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2519

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 66](#) (Complaint, petition, or declaration—For refund of property taxes—Incorrect assessment of mineral property based on taxpayer's erroneous statement of oil production)

The term "selling price," within the meaning of property taxation statutes addressing the valuation of oil and gas leaseholds and lands, refers to the amount of money actually received by the well owner or operator although there may be cases in which the actual selling price received is not ascertained until after the completion of the lawsuit or after the specified calendar year has ended, in which case the owners or operators must inform the tax assessor of the dispute in the annual statements.¹

CUMULATIVE SUPPLEMENT

Cases:

The drilling and deepening of oil and gas wells constitutes new construction for purposes of property tax valuation. [Chevron USA, Inc. v. County of Kern](#), 230 Cal. App. 4th 1315, 179 Cal. Rptr. 3d 372 (5th Dist. 2014), as modified on denial of reh'g, (Nov. 19, 2014).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Yuma County Bd. of Equalization v. Cabot Petroleum Corp.](#), 856 P.2d 844 (Colo. 1993).
As to price fluctuations and the frequent changes in the volume of production, see § 639.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 659

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

B. Real Property and Interests Therein

2. Consideration of Rights Appurtenant to Easements, Restrictions, or Charges

§ 659. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2518

A.L.R. Library

[Separate assessment and taxation of air rights, 56 A.L.R.3d 1300](#)

In assessing, for property taxation, land upon which there is a mill or other plant, and which has, as appurtenant thereto, an easement as to, or a right to, water power or water rights, the value of such easement or rights may be considered in valuing such real property.¹

Where an easement is carved out of one's property for the benefit of another, the market value of the servient estate is lessened, and that of the dominant estate increased, practically by just the value of the easement, and the respective tenements should therefore be assessed accordingly.² This rule applies to easements of ingress and egress or easements of way and to any other easement or servitude which lessens on the one hand and increases on the other the values of the respective properties,³ as well as to easements of light and air.⁴ Although so long as property owners make no use of the air space over their property it is not subject to taxation, once they deny themselves the use of it for a price, it takes on a value for the purposes of assessment.⁵ Negative easements do not necessarily reduce the full cash value of a servient tenement for tax assessment purposes, and the

law does not require easements to be separately assessed.⁶ Before a subservient estate subject to an easement for the benefit of a dominant estate can be held to have no or nominal value for tax purposes, it must first be found to have little or no value of "beneficial interest" for its owner, such as where the parcel can be considered a park or public facility or where the parcel is so interwoven with a dominant estate that it has no extrinsic value.⁷ However, a subservient parcel can have a "beneficial interest" to the owner where the property rights can be "sold or used by the owner either for profit or for the gratification of some need or desire" or where the owner is free to charge admission to strangers for use of the facility.⁸

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Slatersville Finishing Co. v. Greene](#), 40 R.I. 410, 101 A. 226 (1917); [Whiting-Plover Paper Co. v. Town of Linwood](#), 198 Wis. 590, 225 N.W. 177, 64 A.L.R. 140 (1929).
- 2 [Union Falls Power Co. v. Marinette County](#), 238 Wis. 134, 298 N.W. 598, 134 A.L.R. 958 (1941).
- 3 [People ex rel. Poor v. O'Donnel](#), 139 A.D. 83, 124 N.Y.S. 36 (1st Dep't 1910), [aff'd](#), 200 N.Y. 519, 93 N.E. 1129 (1910) and [aff'd](#), 200 N.Y. 518, 93 N.E. 1129 (1910).
- 4 [Tax Lien Co. of New York v. Schultze](#), 213 N.Y. 9, 106 N.E. 751 (1914).
- 5 [Macht v. Department of Assessments of Baltimore City](#), 266 Md. 602, 296 A.2d 162, 56 A.L.R.3d 1285 (1972).
- 6 [Carlson v. Assessment Appeals Bd. I](#), 167 Cal. App. 3d 1004, 213 Cal. Rptr. 555 (6th Dist. 1985).
- 7 [Grasser v. Graham](#), 97 Misc. 2d 417, 411 N.Y.S.2d 836 (Sup 1978).
- 8 [Grasser v. Graham](#), 97 Misc. 2d 417, 411 N.Y.S.2d 836 (Sup 1978).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 660

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

B. Real Property and Interests Therein

2. Consideration of Rights Appurtenant to Easements, Restrictions, or Charges

§ 660. Water rights or power

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2518

A property tax assessment may require water supply lands to be assessed as though they were improved farmlands with continuing farming use.¹ Water power, water rights, or flowage rights, while not in general independently taxable apart from the land to which they are appurtenant or in connection with which they are used, add to the value of the land, and therefore, such additional value must be considered when the land is assessed for purposes of taxation.²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Metropolitan Dist. v. Town of Burlington](#), 241 Conn. 382, 696 A.2d 969 (1997).
- ² [Central Maine Power Co. v. Inhabitants of Town of Turner](#), 128 Me. 486, 148 A. 799 (1930); [Crocker-McElwain Co. v. Board of Assessors of City of Holyoke](#), 296 Mass. 338, 5 N.E.2d 558, 108 A.L.R. 821 (1937).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation Nine XLI C Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

C. Deductions

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2516, 2535 to 2547

A.L.R. Library

A.L.R. Index, Deductions

A.L.R. Index, Depreciation and Deterioration

A.L.R. Index, Obsolescence

West's A.L.R. Digest, [Taxation](#)  2516, 2535 to 2547

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 661

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy


XLI. Valuation

C. Deductions

§ 661. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2535 to 2537

The right of a taxpayer to deductions from tax valuations placed upon his or her property, such as, for example, a bona fide indebtedness, depends upon a statutory grant.¹ In the absence of statutory provisions otherwise, a taxpayer may not deduct his or her liabilities or indebtedness from the assessed value of the taxpayer's taxable property.²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Fidelity & Columbia Trust Co. v. City of Louisville, 245 U.S. 54, 38 S. Ct. 40, 62 L. Ed. 145 \(1917\).](#)

² [Fidelity & Columbia Trust Co. v. City of Louisville, 245 U.S. 54, 38 S. Ct. 40, 62 L. Ed. 145 \(1917\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 662

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

C. Deductions

§ 662. Depreciation and obsolescence

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2516

"Depreciation," for the purposes of assessing the market value of a taxpayer's real property, includes physical depreciation, functional obsolescence, and economic obsolescence.¹ "Physical depreciation" is the wear and tear occasioned by use and the elements.² The use of a depreciated reproduction cost as the sole basis for determining the fair market value is erroneous only where the taxing authority fails to consider other factors that plainly show that such a method would patently lead to unfair and improper results.³ The law requires only that an assessor adopt and use a reasonable method—neither a trial court nor a court of appeal can reject a method found by the responsible board to be reasonable merely because, in the court's nonexpert opinion, another method might have been better.⁴

"Functional obsolescence" is the loss of utility and failure to function because of inadequacies and deficiencies in the property.⁵ "Economic obsolescence" is the loss of value brought about by conditions in the neighborhood of a property causing the loss of business.⁶ "External obsolescence," when valuing real property for taxation purposes, attempts to adjust for a loss in real property value caused by factors outside the property; it may be temporary or permanent, but it is not usually considered curable on the part of the owner, landlord, or tenant, and it carries a market-wide effect and influences a whole class of properties rather than just a single property.⁷

A reduction in the valuation of real property for obsolescence is not automatic and must be established in the record by the taxpayer.⁸ However, a taxpayer may fail to demonstrate that the property is either functionally or economically obsolescent to the degree that it renders the appraisal unjust and inequitable where present uses are being continued.⁹

Observation:

A statutory mandate requiring assessment boards to consider functional obsolescence when assessing real property and the prohibition on substantially overvaluing the assessed property are two independent grounds for overturning an assessment; either one standing alone invalidates an assessment.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

External obsolescence is the measurement of a taxable property's loss in value as a result of factors beyond the physical boundaries of the property and beyond the owner's control. [Enbridge Energy, Limited Partnership v. Commissioner of Revenue](#), 945 N.W.2d 859 (Minn. 2020).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Amert v. Lake County Bd. of Equalization](#), 1998 SD 66, 580 N.W.2d 616 (S.D. 1998).
- 2 [Amert v. Lake County Bd. of Equalization](#), 1998 SD 66, 580 N.W.2d 616 (S.D. 1998).
- 3 [Tidewater Psychiatric Institute, Inc. v. City of Virginia Beach](#), 256 Va. 136, 501 S.E.2d 761 (1998).
- 4 [Texaco, Inc. v. County of Los Angeles](#), 136 Cal. App. 3d 60, 186 Cal. Rptr. 16 (2d Dist. 1982).
- 5 [Amert v. Lake County Bd. of Equalization](#), 1998 SD 66, 580 N.W.2d 616 (S.D. 1998).
A taxpayer was not entitled to a deduction in the valuation of its two coal-fired generating plants due to functional obsolescence under the cost approach in assessing the taxpayer's personal property for ad valorem tax purposes, even though the taxpayer's expert asserted that it would have cost \$20 million to \$30 million less to have built a single larger plant, where the taxpayer failed to produce evidence of overcapacity, inadequacy, or changes in state of the art, or poor design; the plants were profitable and had outstanding performance records; and the expert's cost evaluation was speculation that failed to compare the cost of one plant compared to the cost of two smaller plants. [In re Westmoreland-LG & E Partners North Carolina](#), 174 N.C. App. 692, 622 S.E.2d 124 (2005).
- 6 [Amert v. Lake County Bd. of Equalization](#), 1998 SD 66, 580 N.W.2d 616 (S.D. 1998).
A taxpayer was not entitled to a deduction for economic obsolescence in assessing the value of its coal-fired electricity generating plants under the income approach for ad valorem tax purposes; income was determined by the taxpayer's projected income under long-term supply contracts with a public utility rather than the lower income it would receive selling electricity on the spot market. [In re Westmoreland-LG & E Partners North Carolina](#), 174 N.C. App. 692, 622 S.E.2d 124 (2005).
- 7 [Higbee Co. v. Cuyahoga Cty. Bd. of Revision](#), 107 Ohio St. 3d 325, 2006-Ohio-2, 839 N.E.2d 385 (2006).
- 8 [Amert v. Lake County Bd. of Equalization](#), 1998 SD 66, 580 N.W.2d 616 (S.D. 1998).

- 9 Richter Enterprises, Inc. v. Sully County, 1997 SD 61, 563 N.W.2d 841 (S.D. 1997).
10 Pepperman v. Town of Rangeley, 1999 ME 157, 739 A.2d 851 (Me. 1999).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 663

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

C. Deductions

§ 663. Tax-exempt securities

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2535

The State may levy a tax on the shares of stock in the hands of a stockholder without deducting, in the valuation of such shares, tax-exempt securities or property held or owned by the corporation.¹ A shareholder has no constitutional right to a deduction for a proportionate amount of the capital of the corporation that it invested in United States bonds and other public securities which are themselves exempt from taxation.² The shareholder's shares of stock may be taxed to their full value although the capital of the corporation is invested in bonds or other obligations of the United States or its instrumentalities and agencies³ provided that there is no discrimination against such investments.⁴ A state tax upon corporate shares as such, as distinguished from a tax upon the assets constituting the value of the shares, is not objectionable as a tax upon securities of the United States or its instrumentalities owned by the corporation.⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Des Moines Nat. Bank v. Fairweather](#), 263 U.S. 103, 44 S. Ct. 23, 68 L. Ed. 191 (1923).
- ² [Des Moines Nat. Bank v. Fairweather](#), 263 U.S. 103, 44 S. Ct. 23, 68 L. Ed. 191 (1923); [Security Sav. Bank of Valley Junction v. Connell](#), 198 Iowa 564, 200 N.W. 8, 36 A.L.R. 486 (1924).
- ³ [Schuylkill Trust Co. v. Com. of Pennsylvania](#), 302 U.S. 506, 58 S. Ct. 295, 82 L. Ed. 392 (1938).
- ⁴ [Schuylkill Trust Co. v. Commonwealth of Pennsylvania](#), 296 U.S. 113, 56 S. Ct. 31, 80 L. Ed. 91 (1935).
- ⁵ [Schuylkill Trust Co. v. Commonwealth of Pennsylvania](#), 296 U.S. 113, 56 S. Ct. 31, 80 L. Ed. 91 (1935).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation Nine XLI D Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

D. Excessive or Disproportionate Valuation

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2513 to 2515, 2517

A.L.R. Library

A.L.R. Index, Value and Valuation

West's A.L.R. Digest, [Taxation](#)  2513 to 2515, 2517

Trial Strategy

[Overassessment of Income-Producing Property—Neighborhood Shopping Center, 3 Am. Jur. Proof of Facts 2d 1](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 13, 19](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 664

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

D. Excessive or Disproportionate Valuation

§ 664. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2513](#) to [2515](#), [2517](#)

A.L.R. Library

[Real-estate tax equalization, reassessment, or revaluation program commenced but not completed within the year, as violative of constitutional provisions requiring equal and uniform taxation, 76 A.L.R.2d 1077](#)

A taxpayer has the right to have his or her property assessed at the actual value and has a right to relief if the property is assessed at a value in excess of its actual value or in excess of the value at which others are taxed.¹ The assessment of property for real estate tax purposes is excessive if it is higher than the market value of the property.² The test for determining the validity of an assessment by a county assessor or county board is whether the property in question was valued for tax purposes at its value.³ A taxpayer challenging an assessment must produce sufficient evidence to show that the property's assessed valuation was in excess of the true and full value, lacked uniformity in the same class, or was discriminatory.⁴ It is only when the purchase price of real property does not reflect the true value that a review of independent appraisals based upon other factors is appropriate for purposes of tax valuation.⁵

In the absence of fraudulent or arbitrary conduct on the part of the assessing officers, an excessive or disproportionate valuation for tax purposes of particular property, or particular classes of property, is not invalid.⁶ That is, the fact that an assessment may

be erroneous does not render the tax absolutely void.⁷ However, an "illegal assessment" is one that exceeds the bounds of the taxing entity's authority.⁸ An illegality occurs when there is an impropriety in the manner in which the property was assessed, such as when tax-exempt property is assessed taxes, not when the assessor has made errors in value calculation.⁹

Practice Tip:

When a taxpayer challenges the validity of the valuation method for property tax assessment itself, the trial judge is faced with a question of law.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Because an assessment entails separate valuation of both the land and the improvements, a taxpayer seeking review of an assessment is entitled to challenge the valuation of either of those components, or both of them. [Village at Main Street Phase II, LLC v. Department of Revenue](#), 356 Or. 164, 339 P.3d 428 (2014).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [AT & T Information Systems, Inc. v. State Bd. of Equalization and Assessment](#), 237 Neb. 591, 467 N.W.2d 55 (1991).
- 2 [Metropolitan Jacobson Development Venture v. Board of Review of City of Des Moines](#), 524 N.W.2d 189 (Iowa 1994).
- 3 [Dowd v. Board of Equalization of Boone County](#), 240 Neb. 437, 482 N.W.2d 583 (1992).
- 4 [Butte County v. Vallery](#), 1999 SD 142, 602 N.W.2d 284 (S.D. 1999).
- 5 [Pingue v. Franklin Cty. Bd. of Revision](#), 87 Ohio St. 3d 62, 1999-Ohio-252, 717 N.E.2d 293 (1999).
- 6 [Stalder v. Board of County Com'rs of City and County of Denver](#), 147 Colo. 493, 364 P.2d 389 (1961); [Skinner v. New Mexico State Tax. Commission](#), 66 N.M. 221, 345 P.2d 750, 76 A.L.R.2d 1071 (1959).
As to the effect of fraud or other misconduct, see § 665.
As to judicial intervention in the case of fraud or arbitrary conduct, see § 606.
- 7 [Park v. Banbury](#), 143 Idaho 576, 149 P.3d 851 (2006).
- 8 [UAH-Hydro Kennebec, L.P. v. Town of Winslow](#), 2007 ME 36, 921 A.2d 146 (Me. 2007).
- 9 [UAH-Hydro Kennebec, L.P. v. Town of Winslow](#), 2007 ME 36, 921 A.2d 146 (Me. 2007).
As to the taxation of exempt property, see § 209.
- 10 [Georgiev v. County of Santa Clara](#), 151 Cal. App. 4th 1428, 60 Cal. Rptr. 3d 752 (6th Dist. 2007).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 665

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

D. Excessive or Disproportionate Valuation

§ 665. Fraud or other misconduct

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2513

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 13](#) (Complaint, petition, or declaration—In federal district court—Action under civil rights statute—Against county and state taxing officials—Damages for systematic assessment of property at levels other than permitted by law and in excess of levels at which property in county was generally assessed)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 19](#) (Complaint, petition, or declaration—Allegation—Assessor's intentionally disproportionate valuation of property)

While it is recognized that the fraud which will result in a holding that an excessive or disproportionate tax valuation is invalid may be merely constructive, as distinguished from actual, fraud,¹ mere inadvertence or a bona fide mistake of judgment on the part of assessing officers does not, in itself, amount in law to a fraud, and relief will not be granted unless a valuation is obviously and flagrantly excessive or disproportionate and clearly imputes to the assessors an intention arbitrarily to discriminate against the complaining taxpayer.² Where a valuation for tax purposes has been held excessive, the assessment is not entirely invalid but is invalid to the extent of any excess over the proper valuation.³

With respect to fraud on the part of the taxpayer, a taxpayer who submits a false or fraudulent account in response to a request for income and expense information related to property is prohibited from appealing the assessor's valuation and assessment.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [L.W. Blinn Lumber Co. v. Los Angeles County](#), 216 Cal. 474, 14 P.2d 512, 84 A.L.R. 1304 (1932) (overruled on other grounds in part by, [De Luz Homes v. County of San Diego](#), 45 Cal. 2d 546, 290 P.2d 544 (1955)); [Pierce v. Green](#), 229 Iowa 22, 294 N.W. 237, 131 A.L.R. 335 (1940).
- 2 [City of Tampa v. Palmer](#), 89 Fla. 514, 105 So. 115 (1925).
- 3 [Hudson Motor Car Co. v. City of Detroit](#), 282 Mich. 69, 275 N.W. 770, 113 A.L.R. 1472 (1937).
- 4 [Lucent Technologies, Inc. v. Township of Berkeley Heights](#), 201 N.J. 237, 989 A.2d 844 (2010).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 666

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

D. Excessive or Disproportionate Valuation

§ 666. Evidence

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2514

Trial Strategy

[Overassessment of Income-Producing Property—Neighborhood Shopping Center, 3 Am. Jur. Proof of Facts 2d 1](#)

When a board of tax appeals makes a determination of the true value of real property for a given year, such determination is to be based on evidence presented to it in that case, uncontrolled by the value assessed for prior years.¹ A taxpayer challenging an assessment must produce sufficient evidence to show the property's assessed valuation is in excess of its true and full value, lacks uniformity in the same class, or is discriminatory.² The sale price of real property is evidence of its market value, which is used in determining the property value for real property tax assessment purposes.³ Because the arm's-length sale price of property provides the best evidence of market value for tax purposes,⁴ evidence of bona fide, arm's-length sales should not be disregarded in determining the value of property for tax purposes.⁵ The use of other means to assess the value of property in the presence of an arm's-length sale violates the statute and constitutes an error of law, which the supreme court may correct on certiorari.⁶ In determining the value of property for taxation purposes, once a sale price for the property is presented that appears on its face to reflect a recent, arm's-length transaction, the opponent of using that sale price as the property value must shoulder the burden to show that the elements of a recent, arm's-length transaction were not present.⁷

While an actual sale is strong evidence of fair market value for tax purposes, there may be situations where a court must look beyond a sale, such as where some evidence undermines the bona fide nature of the sale.⁸ Evidence of needed repairs, or the cost of needed repairs, while a factor in arriving at the true value of property for tax purposes, will not alone prove the true value.⁹ Thus, mere evidence of disrepair is not probative evidence of value for tax assessment purposes.¹⁰ It is the decrease in true value that may result from a need for repairs that is the important factor to determine.¹¹ For real property taxation purposes, a tax assessor is allowed to use mass appraisal techniques, under which not all of the particular property's characteristics are considered but rather only those factors which allow the assessor to make a logical estimate of the property's value.¹²

Evidence of past sales may need adjustment in light of any changes which may have taken place in the market for the property.¹³ Comparable properties may lie outside of the local market of the subject property when the evidence indicates that a broad regional market exists.¹⁴ However, a single sale of real property may in some instances provide evidence of the market value for an assessment.¹⁵ A taxpayer attempting to prove a disproportionality between the assessed value and the fair market value is not required to use only comparable properties.¹⁶

CUMULATIVE SUPPLEMENT

Cases:

Prior valuation of limited liability company's (LLC) contaminated property was not probative of market value-in-use for tax assessment purposes, although property remained contaminated and had decreased in size by several acres as result of partial sale, since evidence of contamination of land was only one indicator of value, prior year's assessed value was only one factor Board considered while assessing value under trending rules, LLC provided no analysis relating prior valuation to current assessment, and prior valuation was product of stipulated agreement between assessor and LLC and intended only for that year. [Ind. Code Ann. § 6-1.1-15-17.2. Garrett LLC v. Noble County Assessor, 112 N.E.3d 1168 \(Ind. Tax Ct. 2018\).](#)

Sales price of property bought by limited liability company (LLC) was not reliable indicator of market value-in-use for tax assessment purposes, where no evidence showed property was reasonably exposed to market at time of sale, property appeared to be sold under duress, property was not rendered valueless by contamination, and LLC failed to point to evidence in record that related sales price to appropriate valuation date. [50 Ind. Admin. Code 2.4-1-2. Garrett LLC v. Noble County Assessor, 112 N.E.3d 1168 \(Ind. Tax Ct. 2018\).](#)

In valuating property for tax purposes, appraisal evidence can both attack a sale price as evidence of true value and provide affirmative evidence of value in its own right. [Ohio Rev. Code Ann. § 5713.03. Spirit Master Funding IX, L.L.C. v. Cuyahoga County Board of Revision, 2019-Ohio-1349, 135 N.E.3d 371 \(Ohio Ct. App. 8th Dist. Cuyahoga County 2019\).](#)

Although a billboard's value may not itself be considered when assessing the underlying real property's value, any increase in such value attributable to the billboard's presence may be considered. [53 Pa. Cons. Stat. Ann. § 8811\(a\). In re Consolidated Appeals of Chester-Upland School District, 238 A.3d 1213 \(Pa. 2020\).](#)

An actual sale is strong evidence of fair market value, for property tax purposes. [32 Vt. Stat. Ann. § 3481. Jackson Gore Inn v. Town of Ludlow, 2020 VT 11, 228 A.3d 643 \(Vt. 2020\).](#)

[END OF SUPPLEMENT]

Footnotes

- 1 Freshwater v. Belmont County Bd. of Revision, 80 Ohio St. 3d 26, 1997-Ohio-362, 684 N.E.2d 304 (1997).
- 2 Butte County v. Vallery, 1999 SD 142, 602 N.W.2d 284 (S.D. 1999).
- 3 As to admissions by landowners of the value of property, see Am. Jur. 2d, Evidence § 781.
- 4 Weekley v. Town of Scarborough, 676 A.2d 932 (Me. 1996).
- 5 Yusem v. Town of Raymond, 2001 ME 61, 769 A.2d 865 (Me. 2001); Town of Southwest Harbor v. Harwood,
- 6 2000 ME 213, 763 A.2d 115 (Me. 2000).
- 7 Assessor of Roger Mills County v. Unit Drilling Co., 2011 OK 4, 247 P.3d 1170 (Okla. 2011).
- 8 State ex rel. Levine v. Board of Review of Village of Fox Point, 191 Wis. 2d 363, 528 N.W.2d 424 (1995).
- 9 AEI Net Lease Income & Growth Fund v. Erie Cty. Bd. of Revision, 119 Ohio St. 3d 563, 2008-Ohio-5203,
- 10 895 N.E.2d 830 (2008).
- 11 Barrett/Canfield, LLC v. City of Rutland, 171 Vt. 196, 762 A.2d 823 (2000).
- 12 Throckmorton v. Hamilton Cty. Bd. of Revision, 75 Ohio St. 3d 227, 1996-Ohio-226, 661 N.E.2d 1095
- 13 (1996).
- 14 Gupta v. Cuyahoga Cty. Bd. of Revision, 79 Ohio St. 3d 397, 1997-Ohio-376, 683 N.E.2d 1076 (1997).
- 15 Throckmorton v. Hamilton Cty. Bd. of Revision, 75 Ohio St. 3d 227, 1996-Ohio-226, 661 N.E.2d 1095
- 16 (1996).
- Revenue Cabinet, Com. of Ky. v. Gillig, 957 S.W.2d 206 (Ky. 1997).
- FMC Corp. (Peroxygen Chemicals Div.) v. Unmack, 92 N.Y.2d 179, 677 N.Y.S.2d 269, 699 N.E.2d 893
- (1998).
- FMC Corp. (Peroxygen Chemicals Div.) v. Unmack, 92 N.Y.2d 179, 677 N.Y.S.2d 269, 699 N.E.2d 893
- (1998).
- Firethorn Inv. v. Lancaster County Bd. of Equalization, 261 Neb. 231, 622 N.W.2d 605 (2001).
- Public Service Co. of New Hampshire v. Town of Seabrook, 133 N.H. 365, 580 A.2d 702 (1990).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 667

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

D. Excessive or Disproportionate Valuation

§ 667. Presumptions and burden of proof

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2513

There is a presumption of the validity of assessments by taxing authorities,¹ absent a demonstration that those findings are clearly unreasonable or unlawful,² and thus, such assessments will not be set aside in the absence of evidence showing them to be incorrect.³

Because a tax assessment made by the proper authorities is prima facie correct and valid, the burden is on the taxpayer to show that such assessment is erroneous.⁴ The taxpayer rebuts the presumption that an ad valorem tax assessment is correct by presenting competent, material, and substantial evidence that tends to show that: (1) either the county tax supervisor used an arbitrary method of valuation, or (2) the county tax supervisor used an illegal method of valuation, and (3) the assessment substantially exceeded the true value in money of the property.⁵ The burden is on the protestant to show that a property tax assessment is manifestly excessive, clearly erroneous, or confiscatory.⁶ A petitioner challenging such valuations has the burden of showing by substantial competent evidence⁷ or, according to another view, by clear and convincing evidence⁸ that a particular valuation for tax purposes is excessive, unequal, or disproportionate.⁹ To show that an assessment was "manifestly wrong," the taxpayer must prove that the property is substantially overvalued, there was unjust discrimination, or that the assessment was fraudulent.¹⁰ In a proceeding seeking relief from a property tax assessment, the fact that the taxpayer merely shows up will not defeat the prima facie validity of the assessment; rather, in order to defeat the prima facie validity of the assessment, the taxpayer must offer evidence to invalidate the assessment.¹¹ Also, a taxpayer challenging a property tax assessment cannot prevail based solely on a significant disparity between the fair market value and the assessed value so long as the assessment comes within the range of a reasonable difference of opinion when considered in light of the presumption in its favor.¹²

CUMULATIVE SUPPLEMENT

Cases:

A presumption exists that a board of equalization has faithfully performed its official duties in making a property tax assessment and has acted upon sufficient competent evidence to justify its action; presumption disappears when there is competent evidence adduced on appeal to the contrary, and, from that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all of the evidence presented. West's [Neb.Rev.St. § 77–5016\(9\)](#). [JQH La Vista Conference Center Development LLC v. Sarpy County Bd. of Equalization](#), 285 Neb. 120, 825 N.W.2d 447 (2013).

Once taxpayer has met its initial burden and rebutted the presumption of validity that attaches to the assessment, a court must weigh the entire record, including evidence of claimed deficiencies in the assessment, to determine whether taxpayer has established by a preponderance of the evidence that its property has been overvalued. [N.Y. Comp. Codes R. & Regs. tit. 22, § 202.59\(g\)\(2\)](#). [Brookdale Senior Living Solutions v. Town of Colonie Board of Assessment Review](#), 186 A.D.3d 1801, 130 N.Y.S.3d 850 (3d Dep't 2020).

Taxpayer rebutted presumption of correctness afforded to ad valorem tax assessments related to golf course and related parcels, where chief operating officer (COO) of company that owned golf course testified regarding value of property, and COO was tendered as expert in acquisition and management of golf courses and presented significant evidence regarding valuation of golf courses. [Matter of Old North State Acquisition LLC](#), 792 S.E.2d 525 (N.C. Ct. App. 2016).

Taxpayers meet their burden to overcome the presumption that tax officials act in accordance with the law by producing sufficient evidence to show the assessed valuation was in excess of true and full value, lacked uniformity in the same class, or was discriminatory. [S.D. Const. art. 11, § 2](#). [Trask v. Meade County Commission](#), 2020 SD 25, 943 N.W.2d 493 (S.D. 2020).

Statutory provision that governed the computation of property tax on a dealer's leased heavy equipment inventory through the use of a formula-based approach that based market value on a portion of generated income, was presumptively constitutional, regardless of whether the outcome caused county to lose revenue; the county made its stand on the idea that the constitution compelled a full market-value approach to taxing the gas compressors at issue, but offered no additional arguments for why the statutory scheme was otherwise unreasonable, arbitrary, or capricious, no one argued the legislature attempted to approximate market value, and it was not constitutionally bound to do so. [Tex. Const. art. 8, § 1](#); [Tex. Tax Code Ann. § 23.1241\(b\)](#). [EXLP Leasing, LLC v. Galveston Central Appraisal District](#), 554 S.W.3d 572 (Tex. 2018).

Failure of taxpayers to challenge the deficiency judgments underlying state Department of Taxes' collection actions against them for failure to file personal income tax returns made the deficiency judgments final and uncontestable, and thus taxpayers could not challenge Department's assessments in the collection actions, despite argument that deficiency judgments were time-barred. [32 Vt. Stat. Ann. § 5887\(b\)](#). [State, Department of Taxes v. Montani](#), 2018 VT 21, 184 A.3d 723 (Vt. 2018).

A taxing authority's lack of evidence in support of an assessment does not impeach the correctness of an assessment, since the taxpayer has the burden of proving the assessment erroneous. [City of Richmond v. Jackson Ward Partners, L.P.](#), 726 S.E.2d 279 (Va. 2012).

Once the strong presumption in favor of a county assessor's property valuation is overcome, the burden of going forward shifts to the assessor to defend her valuation. [Mountain Vista Retirement Residence v. Fremont County Assessor](#), 2015 WY 117, 356 P.3d 269 (Wyo. 2015).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Trinity Place Co. v. Finance Adm'r, 72 A.D.2d 274, 424 N.Y.S.2d 433 \(1st Dep't 1980\), order aff'd, 51 N.Y.2d 890, 434 N.Y.S.2d 990, 415 N.E.2d 978 \(1980\); In re Westmoreland-LG & E Partners North Carolina, 174 N.C. App. 692, 622 S.E.2d 124 \(2005\); Newman v. Levin, 120 Ohio St. 3d 127, 2008-Ohio-5202, 896 N.E.2d 995 \(2008\).](#)
There is a presumption that tax officials act in accordance with the law and not arbitrarily or unfairly when assessing property, and the taxpayer bears the burden to overcome this presumption. [Apland v. Butte County, 2006 SD 53, 716 N.W.2d 787 \(S.D. 2006\).](#)
- 2 [Maxxim Med., Inc. v. Tracy, 87 Ohio St. 3d 337, 1999-Ohio-136, 720 N.E.2d 911 \(1999\).](#)
- 3 [State ex rel. Brighton Square Co. v. City of Madison, 178 Wis. 2d 577, 504 N.W.2d 436 \(Ct. App. 1993\).](#)
- 4 [Ford Motor Credit Co. v. Chesterfield County, 281 Va. 321, 707 S.E.2d 311 \(2011\).](#)
- 5 [In re Parkdale America, 710 S.E.2d 449 \(N.C. Ct. App. 2011\).](#)
- 6 [Ozark Gas Pipeline Corp. v. Arkansas Public Service Com'n, 342 Ark. 591, 29 S.W.3d 730 \(2000\).](#)
A tax commissioner's findings are presumptively valid absent a demonstration that those findings are clearly unreasonable or unlawful; consequently, the taxpayer carries the burden to show the manner and extent of the error in the tax commissioner's final determination. [Global Knowledge Training, L.L.C. v. Levin, 127 Ohio St. 3d 34, 2010-Ohio-4411, 936 N.E.2d 463 \(2010\).](#)
- 7 [Trinity Place Co. v. Finance Adm'r, 72 A.D.2d 274, 424 N.Y.S.2d 433 \(1st Dep't 1980\), order aff'd, 51 N.Y.2d 890, 434 N.Y.S.2d 990, 415 N.E.2d 978 \(1980\).](#)
As to the pricing of similar lands, see § 668.
- 8 [Bayer MaterialScience, LLC v. State Tax Com'r, 223 W. Va. 38, 672 S.E.2d 174 \(2008\)](#) (holding that a taxpayer challenging a property tax assessment to the clear and convincing burden of proof does not violate constitutional due process protections).
- 9 [Alfred J. Sweet, Inc., v. City of Auburn, 134 Me. 28, 180 A. 803, 104 A.L.R. 784 \(1935\).](#)
Where a petitioner/real property owner failed to demonstrate by substantial competent evidence that its property was overvalued, but the city's valuation was supported by the cost of the construction of the building, which was new; the cost of the land; mortgages on the property; and a comparable sale, reductions in assessed valuation ordered by the trial court had no adequate support in the record and should not have been made. [Trinity Place Co. v. Finance Adm'r, 72 A.D.2d 274, 424 N.Y.S.2d 433 \(1st Dep't 1980\), order aff'd, 51 N.Y.2d 890, 434 N.Y.S.2d 990, 415 N.E.2d 978 \(1980\).](#)
- 10 [City of Biddeford v. Adams, 1999 ME 49, 727 A.2d 346 \(Me. 1999\).](#)
- 11 [Southern Minnesota Beet Sugar Coop v. County of Renville, 737 N.W.2d 545 \(Minn. 2007\).](#)
- 12 [West Creek Associates, LLC v. County of Goochland, 276 Va. 393, 665 S.E.2d 834 \(2008\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 668

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLI. Valuation

D. Excessive or Disproportionate Valuation

§ 668. Sales price of similar lands

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2515

A.L.R. Library

[Admissibility on issue of value of real property of evidence of sale price of other real property, 85 A.L.R.2d 110](#)

Generally, the market value provides the most reliable valuation for assessment purposes regarding real property which must, pursuant to statute, be assessed at its full value; if at all possible, the market approach must be used to evaluate industrial property.¹ Unique properties for which there is no market are considered specialties and are valued by the cost basis.² It is necessary, in order to show the sale price of other land as evidence of valuation for purposes of taxation, that the conditions surrounding the tracts of land are similar and that the sale of other lands was neither too remote in period of time nor of such a character as to indicate that it did not represent the true value of the property.³ The recent sales of land, the cost of construction of a new and appropriate building, and mortgages given on the property are cogent evidence of its value, at least as to the tax years close to the transactions involved.⁴ Moreover, a valuation of property based upon the purchase price is not unreasonable despite evidence that the purchase price is inflated because of an attempt by the purchaser to obtain all the property in a specified area.⁵

CUMULATIVE SUPPLEMENT

Cases:

The Property Tax Appeal Board's (PTAB) decision to follow the evidence of record to accept out-of-state properties as comparables in assessing the value of taxpayer's real property was not against the manifest weight of the evidence, in action by taxpayer challenging its property tax assessment; the PTAB took into account the fact that taxpayer's assessor adjusted for different variables, including location and demographics, as well as the types of the properties compared, and the discrepancies inherent in utilizing properties from different locations. [Board of Educ. of Ridgeland School Dist. No. 122, Cook County v. Property Tax Appeal Bd., 2012 IL App \(1st\) 110461, 363 Ill. Dec. 461, 975 N.E.2d 263 \(App. Ct. 1st Dist. 2012\).](#)

Tax court acted within its discretion in crediting some of expert's opinions after it had rejected his highest and best use analysis, in valuing taxpayer's distribution-warehouse property; there was no evidence that expert's incorrect opinion on issue of highest and best use fatally tainted his other opinions, or that the tax court gave them too much weight. [Medline Industries, Inc. v. County of Hennepin, 941 N.W.2d 127 \(Minn. 2020\).](#)

Tax court was entitled to apply county expert's higher location adjustment to sales prices of comparable properties to account for traffic and location in determining market value of big-box retail property based on sales approach to support tax assessment; county's expert applied more factors and used more detail than taxpayer's expert to describe desirability of location for a big-box retailer, tax court evaluated factors such as demographics and traffic counts in the general area, as well as the overall location and desirability of the trade area, and parties experts agreed that property's location was superior to that of the comparable properties in terms of population, income demographics, and traffic counts. [Lowe's Home Centers, LLC \(Plymouth\) v. County of Hennepin, 938 N.W.2d 48 \(Minn. 2020\).](#)

Tax court was not required to consider sale of a nearby commercial property in determining market value of taxpayer's property, even though taxpayer's expert analyzed sale to some degree, where neither taxpayer's nor city's expert gave it significant weight, taxpayer's expert placed greater weight in other sales, and city's expert believed property was too small to be useful in valuation. [Macy's Retail Holdings, Inc. v. County of Hennepin, 899 N.W.2d 451 \(Minn. 2017\).](#)

Trial court did not err in relying on 6% debt rate proffered by town's expert appraiser as appropriate calculation of debt-rate element of discounted cash flow method for determining fair market value of taxpayer's hydroelectric facility for property tax purposes, though taxpayer asserted 6% rate was below-market debt rate; expert calculated 6% debt rate based on taxpayer's own reported debt payments as well as those made by similar corporations, taxpayer did not demonstrate that expert's debt rate was invalid and failed to produce data to contradict calculation, and trial court found that expert was able to demonstrate market basis for his debt rate, which it found to represent sound estimates and valid inputs. [TransCanada Hydro Northeast, Inc. v. Town of Rockingham, 2016 VT 100, 154 A.3d 486 \(Vt. 2016\).](#)

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Xerox Corp. v. Ross, 71 A.D.2d 84, 421 N.Y.S.2d 475 \(4th Dep't 1979\).](#)
- 2 [Xerox Corp. v. Ross, 71 A.D.2d 84, 421 N.Y.S.2d 475 \(4th Dep't 1979\).](#)
As to specialty properties, see § 651.
- 3 [In re Erie R. System, 19 N.J. 110, 115 A.2d 89 \(1955\).](#)
- 4 [Trinity Place Co. v. Finance Adm'r, 72 A.D.2d 274, 424 N.Y.S.2d 433 \(1st Dep't 1980\), order aff'd, 51 N.Y.2d 890, 434 N.Y.S.2d 990, 415 N.E.2d 978 \(1980\).](#)
- 5 [Cardinal Federal Sav. and Loan Ass'n v. Cuyahoga County Bd. of Revision, 44 Ohio St. 2d 13, 73 Ohio Op. 2d 83, 336 N.E.2d 433 \(1975\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation Nine XLII Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLII. Notice and Opportunity to Be Heard

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 🔑 2572, 2573(4)

A.L.R. Library

A.L.R. Index, Due Process

A.L.R. Index, Levy

A.L.R. Index, Taxes

A.L.R. Index, Value and Valuation

West's A.L.R. Digest, [Taxation](#) 🔑 2572, 2573(4)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 669

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLII. Notice and Opportunity to Be Heard

§ 669. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2572, 2573(4)

It is a fundamental requirement of the constitutional guaranty of due process of law that the person to be affected by the laws for the taxation of his or her property must have some notice of the proceeding to be had against the property, and an opportunity in some form to be heard before any portion of his or her estate is seized for the support of the government; all laws which permit of the taxation of property without these safeguards are lacking in due process and are unconstitutional and void.¹ Thus, at some stage before a tax becomes irrevocably fixed as a charge on a taxpayer's property, the taxpayer must have an opportunity, of which he or she must have notice, to be heard as to the validity and extent of the tax and his or her liability therefor.² The purpose of statutes requiring the assessor to inform a taxpayer of any increase or decrease in the valuation of taxed property is to enable the taxpayer to protest.³ The taxpayer must be given an opportunity to question the validity of the tax, the taxability of the property, and the amount of the assessment against the property.⁴ A property owner must at some time have an opportunity, as a matter of right and not of grace, to appear and be heard on the question of valuation before some tribunal which has jurisdiction to determine the true value of the property.⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Central of Georgia R. Co. v. Wright](#), 207 U.S. 127, 28 S. Ct. 47, 52 L. Ed. 134 (1907); [People v. Skinner](#), 18 Cal. 2d 349, 115 P.2d 488, 149 A.L.R. 299 (1941); [Garden of Eden Drainage Dist. v. Bartlett Trust Co.](#), 330 Mo. 554, 50 S.W.2d 627, 84 A.L.R. 1078 (1932); [Corthell v. Board of Com'rs of Albany County](#), 44 Wyo. 71, 8 P.2d 812 (1932).
- 2 [Pullman Co. v. Suttles](#), 187 Ga. 217, 199 S.E. 821 (1938); [Griffin v. Cook County](#), 369 Ill. 380, 16 N.E.2d 906, 118 A.L.R. 1157 (1938).

- 3 Good Development Co. v. Horner, 260 N.W.2d 524 (Iowa 1977).
- 4 Turner v. Wade, 254 U.S. 64, 41 S. Ct. 27, 65 L. Ed. 134 (1920); Pullman Co. v. Suttles, 187 Ga. 217, 199 S.E. 821 (1938).
- 5 Security Trust & Safety Vault Co. v. City of Lexington, 203 U.S. 323, 27 S. Ct. 87, 51 L. Ed. 204 (1906); Powell v. Gleason, 50 Ariz. 542, 74 P.2d 47, 114 A.L.R. 838 (1937).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 670

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLII. Notice and Opportunity to Be Heard

§ 670. Particular taxes to which rule extends

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2572, 2573(4)

The due process requirement of notice and opportunity for hearing in the matter of tax assessments has reference only to such cases as involve the exercise of a quasi-judicial power in the determination of the amount of the tax and not to those in which the tax may be computed by a simple mechanical calculation.¹ A like rule applies when the amount of an excise tax is dependent upon the value of the property in connection with the use of which the excise is imposed;² however, in the case of an excise tax not dependent upon the valuation of property, the due process of law guaranty does not require notice and opportunity for hearing.³ Under some statutes, the duty to give notice does not exist where there has been a willful failure on the part of the taxpayer to file a return or where he or she has made a fraudulent false return.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Turner v. Wade](#), 254 U.S. 64, 41 S. Ct. 27, 65 L. Ed. 134 (1920); [Rush v. Brown](#), 1940 OK 194, 187 Okla. 97, 101 P.2d 262 (1940).
- 2 [Morrison-Knudson Co. v. State Bd. of Equalization](#), 58 Wyo. 500, 135 P.2d 927 (1943).
- 3 [Hodge v. Muscatine County](#), 196 U.S. 276, 25 S. Ct. 237, 49 L. Ed. 477 (1905).
- 4 [Town of Jaffrey v. Smith](#), 76 N.H. 168, 80 A. 504 (1911).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 671

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.


Part Nine. Assessment and Levy

XLII. Notice and Opportunity to Be Heard

§ 671. Sufficiency of notice

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2572, 2573(4)

The does not diminish the taxing power of the State but only requires that in its exercise, the citizen must be afforded an opportunity to be heard on all questions of liability and value.¹ The process of taxation does not require the same kind of notice as is required in a suit at law.² The principles involved in due process of law as applied to proceedings for the collection of public revenue by taxation are more summary in character and necessarily less formal than those applicable to cases of a judicial character.³ Notice to a taxpayer of any change in an assessment on his or her property can be either express, implied, or constructive.⁴ Such notice involves no violation of due process of law when it is executed according to customary forms and established usages.⁵ Further, the form on which a notice of assessment and demand for payment is made is irrelevant as long as it provides the taxpayer with all the information required, providing adequate notice that taxes are due.⁶ It is only where the proceedings are arbitrary, oppressive, or unjust that they are declared to be not due process of law.⁷ However, statutory provisions governing the form and duration of the notice to the taxpayer as to his or her tax liability or his right to contest the assessment must be strictly construed.⁸

Normally, it is only after notice to the taxpayer and the opportunity for a departmental hearing that deficiencies, interest, and penalties may be collected.⁹ However, the notice of an intention to levy an assessment may be given before an audit has been completed.¹⁰ Where the failure to give notice of an increased assessment prevents the taxpayer from pursuing his or her administrative remedies before the board of equalization, the increased assessment made by the assessor and the tax computed thereon may be void.¹¹

Observation:

The former valuation should be stated in the notice of increased tax assessment of real estate even where property lines have been changed.¹²

Caution:

While a tax agency's notice of assessment was sufficient to the representative of an estate, it did not refer to the representative's potential personal liability so that the agency's warrant making the representative liable was void for want of the due process requirement of notice.¹³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Keeney v. Comptroller of State of New York, 222 U.S. 525, 32 S. Ct. 105, 56 L. Ed. 299 \(1912\).](#)
- 2 [Meadowbrook Manor, Inc. v. City of St. Louis Park, 258 Minn. 266, 104 N.W.2d 540 \(1960\).](#)
- 3 [State Tax Commission of Arizona v. Board of Sup'rs of Yavapai County, 43 Ariz. 156, 29 P.2d 733 \(1934\).](#)
- 4 [Hamilton v. Edwards, 245 Ga. 810, 267 S.E.2d 246 \(1980\).](#)
- 5 [Meadowbrook Manor, Inc. v. City of St. Louis Park, 258 Minn. 266, 104 N.W.2d 540 \(1960\).](#)
- 6 [Ford Motor Co. v. City of Seattle, Executive Services Department, 160 Wash. 2d 32, 156 P.3d 185 \(2007\).](#)
- 7 [Central of Georgia R. Co. v. Wright, 207 U.S. 127, 28 S. Ct. 47, 52 L. Ed. 134 \(1907\).](#)
- 8 [City of Yakutat v. Ryman, 654 P.2d 785 \(Alaska 1982\).](#)
- 9 [Craig v. City of Detroit Police Dept., 397 Mich. 185, 243 N.W.2d 236 \(1976\).](#)
- 10 [American Handling Equipment Co. v. Kosydar, 42 Ohio St. 2d 150, 71 Ohio Op. 2d 120, 326 N.E.2d 660 \(1975\).](#)
- 11 [John Calvin Manor, Inc. v. Aylward, 517 S.W.2d 59 \(Mo. 1974\).](#)
- 12 [Reed v. Hall County, 199 Neb. 134, 256 N.W.2d 861 \(1977\).](#)
- 13 [State ex rel. Oklahoma Tax Commission v. Hewett's Estate, 1980 OK 192, 621 P.2d 542 \(Okla. 1980\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 672

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.


Part Nine. Assessment and Levy

XLII. Notice and Opportunity to Be Heard

§ 672. Sufficiency of notice—Personal notice

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2572, 2573(4)

The notice which is essential to the validity of an assessment for taxation need not be personal.¹ It is sufficient to make the service by mail,² by publication, or by posting in some public place.³ In the case of notice by mail, the placing in the mail of a notice of a demand for taxes is prima facie evidence that it was received by the addressee.⁴ Moreover, a demand for taxes by mail is sufficient where, although irregularly addressed, it can be found to have been received by the proper person.⁵

Observation:

Where an issue is submitted to the finder of fact, the notice of an increase in the assessed value of real property can be found to have been received on the basis of presumption of delivery of mail even though the taxpayer denies receipt.⁶ However, the presumption cannot be the basis for a sustaining summary judgment denying the taxpayer's claim for a refund.⁷

A statute which names the time and place for the meeting of the assessing board or the board of review, at which any taxpayer can appear and be heard, gives all the notice required, and the proceeding on which the valuation is determined, although it may be followed, if the tax is not paid, by a sale of the delinquent's property, is due process of law.⁸ The constitutionality of

the proceeding is not affected by the fact that the board met at the time fixed by law and adjourned without fixing a date for a subsequent meeting if by the exertion of a trifling effort the taxpayers could have ascertained when such meeting took place.⁹ When the statutes do not fix the time and place of the meeting of the assessors, a notice which fails to state when and where the persons assessed can be heard is insufficient.¹⁰

Practice Tip:

A copy of the notice of appeal of a property valuation from a county board of revision to the board of tax appeals must be filed with the board of revision, not with the board's counsel; the requirement of filing in person or by mail with the board of revision is jurisdictional.¹¹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 State ex rel. Rabren v. Baxter, 46 Ala. App. 134, 239 So. 2d 206 (Civ. App. 1970).
- 2 State ex rel. Rabren v. Baxter, 46 Ala. App. 134, 239 So. 2d 206 (Civ. App. 1970).
- 3 Hunter v. Johnson, 209 U.S. 541, 28 S. Ct. 759, 52 L. Ed. 918 (1908); State ex rel. Rabren v. Baxter, 46 Ala. App. 134, 239 So. 2d 206 (Civ. App. 1970); Herzfeld-Phillipson Co. v. City of Milwaukee, 177 Wis. 431, 189 N.W. 661 (1922).
- 4 State ex rel. Rabren v. Baxter, 46 Ala. App. 134, 239 So. 2d 206 (Civ. App. 1970); City of Boston v. Boston Port Development Co., 308 Mass. 72, 30 N.E.2d 896, 133 A.L.R. 515 (1941).
- 5 State ex rel. Rabren v. Baxter, 46 Ala. App. 134, 239 So. 2d 206 (Civ. App. 1970); City of Boston v. Boston Port Development Co., 308 Mass. 72, 30 N.E.2d 896, 133 A.L.R. 515 (1941).
- 6 Buck v. Leggett, 813 S.W.2d 872 (Mo. 1991).
- 7 Buck v. Leggett, 813 S.W.2d 872 (Mo. 1991).
- 8 Clement Nat. Bank v. State of Vt., 231 U.S. 120, 34 S. Ct. 31, 58 L. Ed. 147 (1913); Hammond v. Winder, 100 Ohio St. 433, 126 N.E. 409, 24 A.L.R. 318 (1919); Alderman v. Wells, 85 S.C. 507, 67 S.E. 781 (1910).
- 9 Lander v. Mercantile Nat. Bank of Cleveland, Ohio, 186 U.S. 458, 22 S. Ct. 908, 46 L. Ed. 1247 (1902).
- 10 City of Norfolk v. Young, 97 Va. 728, 34 S.E. 886 (1900).
- 11 Salem Medical Arts & Development Corp. v. Columbiana County Bd. of Revision, 80 Ohio St. 3d 621, 1998-Ohio-657, 687 N.E.2d 746 (1998).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 673

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLII. Notice and Opportunity to Be Heard

§ 673. Opportunity to be heard

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2572, 2573(4)

In matters of taxation, due process requires that after such notice as may be appropriate the taxpayer has an opportunity to be heard as to the validity of the tax and the amount thereof,¹ but it does not demand an opportunity for judicial review prior to the inauguration of efforts to collect a tax,² or an opportunity for hearing upon each successive step in the tax proceedings.³ The due process requirement is satisfied if there is an opportunity to question the validity or amount of a tax either before the amount is determined or in subsequent proceedings for its collection and enforcement.⁴ It is sufficient if the party assessed has a single opportunity to be heard before some impartial tribunal with respect to the validity and amount of the tax before it is conclusively assessed against him or her.⁵ The owner, if he or she has notice and an opportunity to be heard either before or after the tax lien is fixed on the property, has due process of law.⁶

Notice of the assessment and opportunity to contest it, therefore, need not be given in advance of the assessment;⁷ nor is it essential that the taxpayer have an opportunity to be present before the tribunal by which the tax against him or her was assessed at the time that the assessment was made if the taxpayer has an opportunity to be heard before it has become conclusively established against him or her.⁸ Due process of law may be satisfied if the taxpayer has the right to recover in an action at law any portion of a tax which the taxpayer thinks has been illegally collected.⁹

The right to a hearing is not satisfied, however, by mere a opportunity to file written objections.¹⁰ A hearing in its essence implies that one who is entitled to it has the right to support his or her allegations by argument and proof.¹¹ A tribunal's refusal to hear any evidence is a denial of the legal right to a hearing.¹²

One who has had a right to a hearing before the assessing board while it was making up the assessment is not entitled to another hearing after the assessment has been made in order to take steps to correct any errors therein.¹³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 State ex rel. Rabren v. Baxter, 46 Ala. App. 134, 239 So. 2d 206 (Civ. App. 1970).
- 2 State ex rel. Rabren v. Baxter, 46 Ala. App. 134, 239 So. 2d 206 (Civ. App. 1970).
- 3 State ex rel. Rabren v. Baxter, 46 Ala. App. 134, 239 So. 2d 206 (Civ. App. 1970).
- 4 State ex rel. Rabren v. Baxter, 46 Ala. App. 134, 239 So. 2d 206 (Civ. App. 1970); Anderson Bros. Corp. v. Stone, 227 Miss. 26, 85 So. 2d 767 (1956).
- 5 Dietman v. Hunter, 5 Ill. 2d 486, 126 N.E.2d 22 (1955).
- 6 Maxwell v. Page, 23 N.M. 356, 168 P. 492, 5 A.L.R. 155 (1917).
- 7 Anderson Bros. Corp. v. Stone, 227 Miss. 26, 85 So. 2d 767 (1956).
- 8 Anderson Bros. Corp. v. Stone, 227 Miss. 26, 85 So. 2d 767 (1956).
- 9 Anderson Bros. Corp. v. Stone, 227 Miss. 26, 85 So. 2d 767 (1956).
- 10 Londoner v. City and County of Denver, 210 U.S. 373, 28 S. Ct. 708, 52 L. Ed. 1103 (1908).
- 11 Londoner v. City and County of Denver, 210 U.S. 373, 28 S. Ct. 708, 52 L. Ed. 1103 (1908).
- 12 Oklahoma Natural Gas Co. v. Corporation Com'n of Okl., 1923 OK 400, 90 Okla. 84, 216 P. 917 (1923).
- 13 Nathan v. Spokane County, 35 Wash. 26, 76 P. 521 (1904).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 674

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLII. Notice and Opportunity to Be Heard

§ 674. Hearing tribunals

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2572, 2573(4)

The requirements of due process of law are fully observed if the taxpayer is given an opportunity to contest the validity of the tax at any time before it is made final, whether the proceedings for review take place before a board having a quasi-judicial character or before a tribunal provided by the State for the purpose of determining such questions.¹ It is sufficient if the taxpayers are given the right to appeal to the courts of law and there to be heard and offer evidence before the validity of the tax and the valuation of the property are finally fixed.² A court has no jurisdiction to disturb the findings and determination of a board of review except where the board acts in bad faith or exceeds its jurisdiction.³ Accordingly, when the assessment is made at a public meeting of the board of assessors, at a time and place fixed by law, at which persons subject to taxation have a right to be present and to be heard, this is all that can be reasonably asked even if no right of review is given before a court or any other tribunal.⁴ A taxpayer who fails to avail himself or herself of the right to have a tax assessment reviewed by a board of arbitrators cannot complain that the law is unconstitutional as depriving him or her of property without due process of law.⁵ However, in the exercise of the taxing power for the purpose of raising revenue to defray the expenses of the government, due process of law does not require that property subject to the tax, the validity of a tax, or the amount of an assessment be determined by a judicial inquiry in the ordinary courts of law.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Michigan Cent. R. Co. v. Powers](#), 201 U.S. 245, 26 S. Ct. 459, 50 L. Ed. 744 (1906).
- ² [State v. Several Parcels of Land](#), 83 Neb. 13, 119 N.W. 21 (1908); [Nathan v. Spokane County](#), 35 Wash. 26, 76 P. 521 (1904).
- ³ [State ex rel. Brighton Square Co. v. City of Madison](#), 178 Wis. 2d 577, 504 N.W.2d 436 (Ct. App. 1993).

- 4 Lander v. Mercantile Nat. Bank of Cleveland, Ohio, 186 U.S. 458, 22 S. Ct. 908, 46 L. Ed. 1247 (1902).
5 McGregor v. Hogan, 263 U.S. 234, 44 S. Ct. 50, 68 L. Ed. 282 (1923).
6 Yuma County v. Arizona & S.R. Co., 30 Ariz. 27, 243 P. 907 (1926).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation Nine XLIII Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLIII. Assessment of Omitted Property

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2568 to 2670, 2573(2), 2573(3)

A.L.R. Library

A.L.R. Index, Levy

A.L.R. Index, Taxes

A.L.R. Index, Value and Valuation

West's A.L.R. Digest, [Taxation](#)  2568 to 2670, 2573(2), 2573(3)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 675

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLIII. Assessment of Omitted Property

§ 675. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2568 to 2570, 2573(2), 2573(3)

A tax assessor may add property to the assessment roll that has from any cause been omitted, in whole or in part, from the assessment roll.¹ The owner of taxable property omitted from the tax rolls becomes liable for the tax thereon at the time that the property ought to have been placed upon the rolls, and this liability continues until the tax is discharged by payment.² Taxes are not canceled and discharged by the failure of duty on the part of any tribunal or officer, legislative or administrative.³ However, in order to sustain an addition of property by tax assessors to a return as omitted property, it must appear that specific items were added which were not assessed in the original assessment.⁴ The omissions of the taxing officers, in previous years, to assess certain property cannot control the duty imposed by law upon their successors or the power of the legislature.⁵

Caution:

If a town concludes that its assessor failed to assess certain property and chooses to assess that property supplementally, the town bears the burden of sustaining the validity of the supplemental assessment.⁶

No statutes of limitation run against the State, and it is a matter of discretion with it to determine how far into the past it will reach to compel performance of a taxpayer's obligation.⁷ The completion of the tax roll for a given year creates no vested right in the owners of property subject to taxation that the assessment not thereafter be modified or amended to their detriment.⁸ When a report of a federal correction is made, thus reopening a year to a claim for a refund or an additional assessment of state corporate tax, a refund or additional assessment is not restricted to those items adjusted by the Internal Revenue Service.⁹ Omitted property may be constitutionally assessed even if, at the time that the assessment is made, the property has passed out of existence.¹⁰ The statutes usually provide a limitation of time within which the assessment of omitted property must be made, but if no limitation is made by statute, the courts cannot create one.¹¹ Thus, in the absence of express authority, a board of county commissioners has no authority to place upon the assessment roll any property omitted in former years.¹² Moreover, if proceedings to add omitted property to the tax list are taken within the proper time, the owner cannot escape by contesting the right of the assessors to impose the tax and by keeping the matter in litigation beyond the time fixed by law for making the assessment.¹³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Clackamas County Assessor v. Village At Main Street Phase II, LLC](#), 349 Or. 330, 245 P.3d 81 (2010).
- 2 [State v. O'Connell](#), 170 Minn. 76, 211 N.W. 945 (1927); [Republic Ins. Co. v. Highland Park Independent School Dist.](#), 141 Tex. 224, 171 S.W.2d 342 (Comm'n App. 1943).
- 3 [State ex rel. Wyman v. Williams](#), 139 Kan. 599, 32 P.2d 481 (1934); [State v. O'Connell](#), 170 Minn. 76, 211 N.W. 945 (1927); [Knudtson v. Citizens' Nat. Bank & Trust Co. of Sioux Falls](#), 62 S.D. 71, 251 N.W. 810 (1933).
- 4 [Sealtest Central Division-Omaha of Kraftco Corp. v. Douglas County Bd. of Equalization](#), 193 Neb. 809, 229 N.W.2d 545 (1975).
- 5 [Wardall v. State](#), 29 Cal. 2d 639, 177 P.2d 270 (1947); [State ex rel. Wyman v. Williams](#), 139 Kan. 599, 32 P.2d 481 (1934).
- 6 [S.D. Warren Co. v. Town of Standish](#), 1998 ME 66, 708 A.2d 1019 (Me. 1998).
- 7 [State ex rel. Wyman v. Williams](#), 139 Kan. 599, 32 P.2d 481 (1934); [Knudtson v. Citizens' Nat. Bank & Trust Co. of Sioux Falls](#), 62 S.D. 71, 251 N.W. 810 (1933).
- 8 [State v. O'Connell](#), 170 Minn. 76, 211 N.W. 945 (1927); [Bogue v. Laughlin](#), 149 Wis. 271, 136 N.W. 606 (1912).
- 9 [International Health & Life Ins. Co. v. Department of Revenue](#), 269 Or. 23, 523 P.2d 223 (1974).
- 10 [State v. O'Connell](#), 170 Minn. 76, 211 N.W. 945 (1927).
- 11 [Bogue v. Laughlin](#), 149 Wis. 271, 136 N.W. 606 (1912).
- 12 [Pierson v. Minnehaha County](#), 28 S.D. 534, 134 N.W. 212 (1912).
- 13 [State v. Holcomb](#), 81 Kan. 879, 106 P. 1030 (1910).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 676

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLIII. Assessment of Omitted Property

§ 676. Notice and opportunity for hearing

[Topic Summary](#) | [Correlation Table](#) | [References](#)

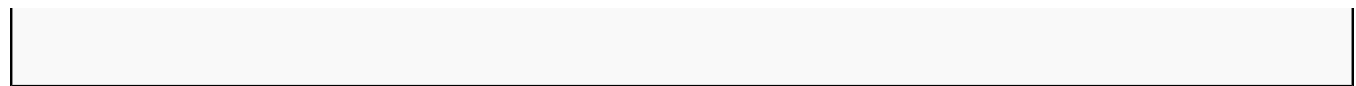
West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2568 to 2570, 2573(2), 2573(3)

Due process of law requires that somewhere during the course of the process of an assessment of omitted property the taxpayer has an opportunity to be heard upon the question as to the validity and amount of a tax levied upon the omitted property.¹ The general notice of an assessment for a particular year is not sufficient notice of an assessment of omitted property as of that year but actually made in a subsequent year and not contained in the assessment roll of the year which the taxpayers are given an opportunity to examine.² In the absence of a law requiring notice to be given, the statute giving the opportunity to be heard is sufficient in such cases to authorize a county board of equalization to assess omitted or unassessed real property without previous notice to the owner of real estate.³ A property owner cannot complain that he or she did not receive the statutory notice of the assessment of property as omitted property where the owner appeared generally before the board of review, pursuant to the notice.⁴

Observation:

The legislature, not the assessor, has the authority to create grounds for an exemption from ad valorem taxation, and when an assessor grants an exemption from taxation in a wholesale fashion indicating that he or she has abrogated such legislative power to himself or herself, the assessor cannot cloak himself or herself with protection surrounding individual discretionary decisions.⁵



© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 Baird v. Burke County, 53 N.D. 140, 205 N.W. 17 (1925); Republic Ins. Co. v. Highland Park Independent School Dist., 141 Tex. 224, 171 S.W.2d 342 (Comm'n App. 1943).
- 2 Security Trust & Safety Vault Co. v. City of Lexington, 203 U.S. 323, 27 S. Ct. 87, 51 L. Ed. 204 (1906).
- 3 Radium Hospital v. Greenleaf, 118 Neb. 136, 223 N.W. 667 (1929).
- 4 Bogue v. Laughlin, 149 Wis. 271, 136 N.W. 606 (1912).
- 5 Dudley v. Kerwick, 52 N.Y.2d 542, 439 N.Y.S.2d 305, 421 N.E.2d 797 (1981).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 677

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLIII. Assessment of Omitted Property

§ 677. After death of owner

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2568 to 2570, 2573(2), 2573(3)

Differing views have been expressed regarding the power, after the death of a property owner, to spread property taxes against property omitted from tax rolls for years prior to the owner's death, such differing views arising usually because of differences in the tax laws.¹ In many jurisdictions, it is the right of the officers who are empowered and charged with the duty to see that omitted property is subjected to taxation is a continuing one against each and every taxpayer, and it is not terminated by the death of the latter, but proceedings in discharge of such duty can be maintained against his or her estate after his or her death, and the notice required by the law may be served on the decedent's administrator or executor.² No claim needs to be filed with the administrator of a decedent before commencing an action to recover omitted taxes.³ Some statutes expressly authorize the assessment of omitted property against the representatives of a decedent,⁴ and such statutes are not unconstitutional.⁵ Other courts have denied the power, after the death of the owner, to spread property taxes against property omitted from the tax rolls for years prior to the owner's death.⁶

An assessment may be made against personal representatives for omitted personal property in their possession if they had in their possession on the date of the assessment personal property subject to taxation although not the identical property omitted.⁷ To sustain a claim for taxes on personal property omitted from assessments of previous years during the life of the decedent, it is incumbent on the authorities to prove the ownership of the property in the decedent during the omitted years; proof of ownership at the time of the decedent's death is not sufficient.⁸

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 People v. Sears, 344 Ill. 189, 176 N.E. 273 (1931).
- 2 Gamble v. Patrick, 1908 OK 254, 22 Okla. 915, 99 P. 640 (1908); Knudtson v. Citizens' Nat. Bank & Trust
- Co. of Sioux Falls, 62 S.D. 71, 251 N.W. 810 (1933).
- 3 Knudtson v. Citizens' Nat. Bank & Trust Co. of Sioux Falls, 62 S.D. 71, 251 N.W. 810 (1933).
- 4 Gallup v. Schmidt, 183 U.S. 300, 22 S. Ct. 162, 46 L. Ed. 207 (1902); Bogue v. Laughlin, 149 Wis. 271,
- 136 N.W. 606 (1912).
- 5 Gallup v. Schmidt, 183 U.S. 300, 22 S. Ct. 162, 46 L. Ed. 207 (1902); Bogue v. Laughlin, 149 Wis. 271,
- 136 N.W. 606 (1912).
- 6 Michigan Trust Co. v. City of Grand Rapids, 262 Mich. 547, 247 N.W. 744, 89 A.L.R. 840 (1933).
- 7 Bogue v. Laughlin, 149 Wis. 271, 136 N.W. 606 (1912).
- 8 Gibson v. Clark, 131 Iowa 325, 108 N.W. 527 (1906).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government
Works.

72 Am. Jur. 2d State and Local Taxation Nine XLIV Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLIV. Curative Statutes

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Statutes](#) 🔑 278.11, 278.39

West's Key Number Digest, [Taxation](#) 🔑 2604

A.L.R. Library

A.L.R. Index, Due Process

A.L.R. Index, Levy

A.L.R. Index, Taxes

A.L.R. Index, Value and Valuation

West's A.L.R. Digest, [Statutes](#) 🔑 278.11, 278.39

West's A.L.R. Digest, [Taxation](#) 🔑 2604

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 678

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLIV. Curative Statutes

§ 678. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#) 🔑 278.11, 278.39

West's Key Number Digest, [Taxation](#) 🔑 2604

The general rule is that a legislature may do anything by a curative act which it could have done originally.¹ The legislature has the power to enact curative legislation.² What the legislature may authorize it may confirm provided that no vested interests have arisen.³ However, such legislation must exhibit on its face evidence that it is intended to cure or validate defective legislation.⁴ Ordinarily, a legislature may ratify any act that it could have authorized.⁵ However, where an assessment is so arbitrary, excessive, disproportionate, or discriminatory as to violate the due process or equal protection or similar clauses, or other provisions, of the federal or state constitutions, designed to produce equality and uniformity of taxation, the defect is beyond the reach of curative legislation.⁶ Moreover, a legislature may not effect a validation of a tax, otherwise unconstitutional, by merely changing its descriptive words.⁷ Thus, a curative legislation, to be valid and constitutional, must meet two tests: (1) that the legislature originally had the power to authorize the acts done or to confer the powers exercised; and (2) that contracts are not impaired nor vested rights disturbed.⁸

A curative act simply affects the recognition, protection, and enforcement of preexisting rights, and not the rights themselves, and thus is a remedial law which may be applied retroactively without violating the state constitution.⁹ Thus, where a statute merely cures defects, enforces existing obligations, or confirms existing rights, it does not impair the substantive rights of a party and is not void.¹⁰ If the right impinged is substantive or vested, it is protected from the retroactive application of statutes.¹¹ Remedial, curative, or enabling statutes merely remove legal obstacles and permit parties to carry out defective contracts according to their own desires and intentions.¹² Where the object and effect of a curative statute is to correct an innocent mistake, remedy a mischief, execute the intention of the parties, and promote justice, the statute is constitutional.¹³

However, curative or validating statutes cannot be applied to illegal contracts because the legislature cannot seek to cure or validate that which it cannot originally authorize.¹⁴

Observation:

A party who has made an illegal contract has no right to insist that it remain permanently illegal, and making a contract voluntarily and fairly entered into for the parties' mutual advantage legal by a remedial, curative, or enabling statute takes nothing away from either party.¹⁵

Caution:

It is clearly within Congress's power to enact retroactive legislation ratifying actions that, when undertaken, may have been unauthorized.¹⁶ A jurisdictional defect in a judgment or proceeding cannot be cured by retroactive legislation without a denial of due process, but retroactive legislation designed to cure nonjurisdictional or modal defects is within the constitutional power of the legislature.¹⁷

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 Schwarzkopf v. Sac County Bd. of Sup'rs, 341 N.W.2d 1 (Iowa 1983).
- 2 People v. Reedy, 186 Ill. 2d 1, 237 Ill. Dec. 74, 708 N.E.2d 1114 (1999).
- 3 City of Allegan, Mich., v. Consumers' Power Co., 71 F.2d 477 (C.C.A. 6th Cir. 1934).
- 4 People v. Reedy, 186 Ill. 2d 1, 237 Ill. Dec. 74, 708 N.E.2d 1114 (1999).
- 5 U.S. Fidelity & Guaranty Co. v. Highway Engineering & Const. Co., 51 F.2d 894 (C.C.A. 5th Cir. 1931).
- 6 Graham v. Goodcell, 282 U.S. 409, 51 S. Ct. 186, 75 L. Ed. 415 (1931).
- 7 Railway Exp. Agency, Inc. v. Com. of Va., 358 U.S. 434, 79 S. Ct. 411, 3 L. Ed. 2d 450 (1959).
- 8 State ex rel. Tomasic v. Kansas City, 230 Kan. 404, 636 P.2d 760 (1981).
- 9 Bielat v. Bielat, 87 Ohio St. 3d 350, 2000-Ohio-451, 721 N.E.2d 28 (2000).
An enactment is "curative," and thus may be applied retroactively, only if it clarifies or technically corrects an ambiguous statute. 1000 Virginia Ltd. Partnership v. Vertecs Corp., 158 Wash. 2d 566, 146 P.3d 423 (2006), as corrected, (Nov. 15, 2006).
- 10 Fowler Properties, Inc. v. Dowland, 282 Ga. 76, 646 S.E.2d 197 (2007).
- 11 Resolution Trust Corp. v. Maplewood Investments, 31 F.3d 1276, 24 U.C.C. Rep. Serv. 2d 119 (4th Cir. 1994).
- 12 McNair v. Knott, 302 U.S. 369, 58 S. Ct. 245, 82 L. Ed. 307 (1937).
- 13 Goddard v. Frazier, 156 F.2d 938 (C.C.A. 10th Cir. 1946).
- 14 Himrich v. Carpenter, 1997 SD 116, 569 N.W.2d 568 (S.D. 1997).

- 15 [McNair v. Knott](#), 302 U.S. 369, 58 S. Ct. 245, 82 L. Ed. 307 (1937).
16 [E.E.O.C. v. Westinghouse Elec. Corp.](#), 765 F.2d 389 (3d Cir. 1985).
17 [Dryfoos v. Hostetter](#), 268 Md. 396, 302 A.2d 28 (1973).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 679

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLIV. Curative Statutes

§ 679. Lack of notice or opportunity to be heard

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#) 278.11, 278.39

West's Key Number Digest, [Taxation](#) 2604

Defects in tax assessments arising from lack of notice and opportunity for hearing cannot be remedied by a curative statute where such notice or opportunity for hearing is essential to due process of law as guaranteed by the federal and state constitutions.¹ Thus, it would seem that where statutory requirements, other than in express terms providing for notice and hearing, are designed, or are construed by the courts to be designed, to afford a taxpayer an opportunity for the examination of his or her grievances with respect to the assessment of a tax, a failure of tax officials to comply with such requirements may not be cured by retrospective legislation where this would indirectly deprive the taxpayer of the opportunity to be heard.²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [People ex rel. Amestay Estate Co. v. Van Nuys Lighting Dist. of Los Angeles County](#), 173 Cal. 792, 162 P. 97 (1916); [Scott v. Scott](#), 158 Fla. 781, 30 So. 2d 620 (1947).
- 2 [Williams v. Board of Sup'rs of Albany County](#), 122 U.S. 154, 7 S. Ct. 1244, 30 L. Ed. 1088 (1887).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 680

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy


XLIV. Curative Statutes

§ 680. Procedural defects in levy or assessment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Statutes](#)  278.11, 278.39

West's Key Number Digest, [Taxation](#)  2604

Procedural defects in the levy of taxes not involving any jurisdictional defect,¹ such as an error in the computation of the tax rate, lack of specification or itemization, tardiness of passage or certification of the levy, the making of the levy by way of resolution instead of by ordinance, and the like may be remedied by retrospective curative legislation.² However, upon the theory that an incurable jurisdictional defect was involved, the failure of tax authorities to levy a tax within the time prescribed by the enabling statute, as distinguished from their failure to return seasonably the certificate of such a levy made within the statutory period, has been held not to be remedied by subsequent legislation.³ The application of a statute to a subsisting claim for relief does not violate the prohibition of retroactive legislation where the statute effects a change that is only procedural or remedial in nature.⁴ The court must correct errors of law, and if a board failed to follow the statutory basis for a tax assessment, the board's determination is subject to reversal.⁵

In the application of the principles governing the power of the legislature to remedy defects in the assessments of taxes, defective descriptions in the assessment roll or its equivalent, of property subject to taxation, or of its owner, may be cured by subsequent legislation⁶ unless the defect in the description is of such a nature as to constitute a jurisdictional one, in which case it is beyond the reach of a curative statute.⁷ Other defects and irregularities in the assessment of property that are within the reach of curative legislation include the failure to sign the tax list⁸ and the failure to affix the public seal to the assessment roll.⁹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 Williams v. Board of Sup'rs of Albany County, 122 U.S. 154, 7 S. Ct. 1244, 30 L. Ed. 1088 (1887).
- 2 People ex rel. Ward v. Chicago & E.I. Ry. Co., 365 Ill. 202, 6 N.E.2d 119 (1936).
- 3 People ex rel. Ward v. Chicago & E.I. Ry. Co., 365 Ill. 202, 6 N.E.2d 119 (1936).
- 4 People v. McCreadie, 938 P.2d 528 (Colo. 1997).
- 5 Waste Management of Wisconsin, Inc. v. Kenosha County Bd. of Review, 184 Wis. 2d 541, 516 N.W.2d 695 (1994).
- 6 Schainman v. All Persons, 96 Cal. App. 753, 275 P. 225 (1st Dist. 1929).
- 7 Manby v. Voorhees, 27 N.M. 511, 203 P. 543 (1921).
- 8 Davis Holding Corp. v. Wilcox, 112 Conn. 543, 153 A. 169 (1931).
- 9 City of Rochester v. Fourteenth Ward Co-op. Bldg. Lot Ass'n, 183 N.Y. 23, 75 N.E. 692 (1905).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation Nine XLV A Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy


XLV. Abatement and Proceedings Therein

A. Grounds for Relief

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2645 to 2647

A.L.R. Library

A.L.R. Index, Abatement

A.L.R. Index, Levy

A.L.R. Index, Taxes

A.L.R. Index, Value and Valuation

West's A.L.R. Digest, [Taxation](#)  2645 to 2647

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 27, 60](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 681

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy


XLV. Abatement and Proceedings Therein

A. Grounds for Relief

§ 681. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2645 to 2647

A.L.R. Library

[Standing of one taxpayer to complain of underassessment or nonassessment of property of another for state and local taxation, 9 A.L.R.4th 428](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 60](#) (Complaint, petition, or declaration—For refund of taxes paid under protest—General form)

In general circumstances, a tax abatement is the proper and exclusive remedy available to a landowner aggrieved by excessive taxes.¹ For the purposes of taxation, the term "abate" means to reduce in value.² An "adjustment," in tax practice, corrects the erroneous determination of a deficiency.³ The tax-abatement statutes provide the exclusive remedy available to a taxpayer dissatisfied with an assessment made against his or her property.⁴ However, where a party alleges that a tax assessment was

illegal and void, and not a mere error in valuation, the party is not required to challenge that assessment with the county board of equalization but may apply directly for judicial relief⁵ where questions of law and of statutory and constitutional construction preponderate over the questions of fact.⁶ Thus, one seeking to invoke the equity jurisdiction of a superior court in a tax-abatement proceeding must demonstrate that he or she has no remedy at law or none that is adequate.⁷

Observation:

An application for an administrative abatement is the proper means to obtain a remedy when a real property tax assessment is "excessive"; that is, when the assessment was overvalued or discriminatorily excessive but the tax was otherwise lawful, while a declaratory judgment action is the proper means to obtain a remedy when the entire tax assessment is "void"; that is, the tax itself is unlawful or the taking authority is invalid.⁸

CUMULATIVE SUPPLEMENT

Cases:

A taxpayer seeking a tax abatement may choose which forum to use, but may not use both the Board of Tax and Land Appeals (BTLA) and the superior court. RSA 76:16–a, 76:17. [Signal Aviation Services, Inc. v. City of Lebanon](#), 62 A.3d 877 (N.H. 2013).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Lopes v. City of Peabody](#), 430 Mass. 305, 718 N.E.2d 846 (1999).
- 2 [LSP Ass'n v. Town of Gilford](#), 142 N.H. 369, 702 A.2d 795 (1997).
- 3 [Hopper v. Government of Virgin Islands](#), 550 F.2d 844 (3d Cir. 1977).
- 4 [Tyler Road Development Corp. v. Town of Londonderry](#), 145 N.H. 615, 766 A.2d 267 (2000).
- 5 [Burlington Northern R. Co. v. Green](#), 2001 SD 48, 624 N.W.2d 826 (S.D. 2001).
- 6 [Mingledorff v. Vaughan Regional Medical Center, Inc.](#), 682 So. 2d 415 (Ala. 1996).
- 7 [Wickes Asset Management, Inc. v. Dupuis](#), 679 A.2d 314 (R.I. 1996).
- 8 [Capodilupo v. Town of Bristol](#), 1999 ME 96, 730 A.2d 1257 (Me. 1999).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 682

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLV. Abatement and Proceedings Therein

A. Grounds for Relief

§ 682. Excessive or disproportionate valuation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2647

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 27](#) (Judgment or decree—Compelling abatement of wrongful assessment)

Under the provisions of many statutes relating to, or incidentally affecting, the right of a taxpayer to procure an abatement of the taxes assessed against him or her, such relief may be granted upon the ground that the property involved was valued by the original assessing officers at a figure in excess of its actual cash value.¹ A claim of excessive assessment is recognized as one sounding in constructive fraud.²

An assessment is deemed fraudulent if a taxpayer can prove that his or her property is assessed at a value disproportionately higher than similarly situated property.³ Disproportionality of a tax burden, and not methodology, is the linchpin in establishing entitlement to a petition for tax abatement; while it is possible that a flawed methodology may lead to a disproportionate tax burden, the flawed methodology does not, in and of itself, prove the disproportionate result.⁴ To establish disproportionality, the plaintiffs must show that their assessment is higher than the general level of assessment in the jurisdiction.⁵ Thus,

disproportionate taxation is not shown where the taxpayer fails to sustain the burden of showing a systematic and intentional undervaluation of other property in the locality.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 Territory of Arizona ex rel. Gaines v. Copper Queen Consol. Min. Co., 233 U.S. 87, 34 S. Ct. 546, 58 L. Ed. 863 (1914); Somers v. City of Meriden, 119 Conn. 5, 174 A. 184, 95 A.L.R. 434 (1934); In re Masonic Temple Soc., 90 W. Va. 441, 111 S.E. 637, 22 A.L.R. 892 (1922).
- 2 28 East Jackson Enterprises, Inc. v. Cullerton, 523 F.2d 439 (7th Cir. 1975).
- 3 28 East Jackson Enterprises, Inc. v. Cullerton, 523 F.2d 439 (7th Cir. 1975).
As to the taxpayer's burden of proof, see § 691.
- 4 The LLK Trust v. Town of Wolfeboro, 159 N.H. 734, 992 A.2d 666 (2010).
- 5 Tennessee Gas Pipeline Co. v. Town of Hudson, 145 N.H. 598, 766 A.2d 672 (2000).
As to the taxpayer's burden of proof, see § 691.
- 6 Merlino v. Tax Assessors for Town of North Providence, 114 R.I. 630, 337 A.2d 796 (1975).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 683

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLV. Abatement and Proceedings Therein

A. Grounds for Relief

§ 683. Exempt or nontaxable property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2645

Whether a tax assessment may be abated upon the ground that the assessors included property not subject to taxation (either because it was expressly made exempt by controlling statutes, because it was not property of the kind subjected to taxation by the general revenue statutes of the taxing jurisdiction, or because it had no situs for tax purposes within the taxing district in question) depends primarily upon the applicable legislation relating to or affecting the subject of the abatement of assessments. It has been frequently recognized that under a proper interpretation of the applicable legislative enactments, an abatement may, in a proper case, be granted upon the ground indicated.¹ A challenge to the validity of a tax on exempt property is a challenge to the legality, not the correctness, of a tax; thus, such challenge may be filed directly in district court without being reviewed by a jurisdiction's board of review and tax commission.²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [All Saints Parish v. Inhabitants of Town of Brookline](#), 178 Mass. 404, 59 N.E. 1003 (1901); [In re Masonic Temple Soc.](#), 90 W. Va. 441, 111 S.E. 637, 22 A.L.R. 892 (1922).
- ² [Triangle Marine, Inc. v. Savoie](#), 681 So. 2d 937 (La. 1996).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 684

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLV. Abatement and Proceedings Therein

A. Grounds for Relief

§ 684. Poverty abatement

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2645

The purpose of poverty abatement statutes is to prevent towns from forcing the sale of property in order to collect taxes from those otherwise unable to pay.¹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Mason v. Town of Readfield, 1998 ME 201, 715 A.2d 179 \(Me. 1998\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation Nine XLV B Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLV. Abatement and Proceedings Therein

B. Powers, Duties, Functions, and Liabilities of Administrative Agencies and Boards

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 🔑 2655, 2678

A.L.R. Library

A.L.R. Index, Administrative Law

A.L.R. Index, Tax Court

West's A.L.R. Digest, [Taxation](#) 🔑 2655, 2678

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 15](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 685

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy


XLV. Abatement and Proceedings Therein

B. Powers, Duties, Functions, and Liabilities of Administrative Agencies and Boards

§ 685. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2655](#), [2678](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 15](#) (Complaint, petition, or declaration—Allegation—Failure of administrative agency to hold hearing for equalization of assessments)

The board of tax revision is a quasi-judicial body.¹ As such, the board of revision has jurisdiction to determine whether a taxpayer's complaint meets jurisdictional requirements.² As part of its jurisdiction to hear and rule on complaints, the board of revision must examine the complaint to determine whether it meets jurisdictional requirements; if the complaint meets jurisdictional requirements, the board is empowered to consider evidence and determine the true value of the property.³ The fundamental duty and function of a board of equalization is, of course, to adjust the tax valuations of the property in the various tax districts of the state so that no individual tax district or particular class of taxable property is required to bear a disproportionate share of the total tax burden,⁴ and in the performance of this function, such a board will be presumed to have exercised its powers fairly and reasonably.⁵ The state tax commission has the power to remove from the assessment rolls property that it finds to be constitutionally or statutorily exempt from taxation, and it is not necessary for a taxpayer to pay under protest and be put to the expense of a lawsuit until the taxpayer has exhausted his or her administrative remedies.⁶ Administrative

boards and officers authorized generally to grant tax abatements have no power to grant an abatement upon grounds or under circumstances not authorized by the governing statutes as construed by the highest court of the state.⁷

Observation:

A Tax Equalization and Review Commission (TERC) is an agency which has only the powers conferred upon it by the legislature, and its power of equity is confined to those questions which relate to the liability of the property to assessment or to the amount thereof. However, it does not have the power to apply equitable principles, such as the "doctrine of unique circumstances," in jurisdictional matters.⁸

A board of tax and land appeals may determine questions relating to taxation. Statutes give it original concurrent jurisdiction with the superior court to determine questions relating to taxation de novo and authorize it to hear and determine all matters involving questions of taxation properly brought before it. However, even if not expressly granted by statute, the board of tax and land appeals has the inherent authority to decide whether a case on its docket is contested or resolved.⁹

The weighing of evidence and granting credibility is the statutory job of the board of tax appeals.¹⁰ As the fact finder, it has wide discretion to determine the weight and credibility of the witnesses' testimony, and it may accept all, part, or none of the testimony.¹¹ It may approve the board of revision's valuation of the taxpayer's property if the taxpayer does not prove his or her right to a reduction in value.¹² In appeals from boards of revision, the board of tax appeals must determine the taxable value of the property and certify the decision to, inter alios, the county auditor; when the board's order becomes final, the tax officials, including the county auditor, must make the changes in their tax lists or other records which the decision requires.¹³

CUMULATIVE SUPPLEMENT

Cases:

Property Tax Administrator's annual statistical and narrative reports were competent evidence to support Tax Equalization and Review Commission (TERC) equalization order to increase grassland value, despite lack of sales file information for each real property transaction. [Neb. Rev. Stat. §§ 77-1327, 77-5016\(4\), 77-5026, 77-5027\(3\)](#). [County of Webster v. Nebraska Tax Equalization and Review Commission](#), 296 Neb. 751, 896 N.W.2d 887 (2017).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Sharon Village Ltd. v. Licking County Bd. of Revision](#), 78 Ohio St. 3d 479, 1997-Ohio-197, 678 N.E.2d 932 (1997).

- 2 Elkem Metals Co., Ltd. Partnership v. Washington County Bd. of Revision, 81 Ohio St. 3d 683, 1998-
Ohio-601, 693 N.E.2d 276 (1998).
- 3 Elkem Metals Co., Ltd. Partnership v. Washington County Bd. of Revision, 81 Ohio St. 3d 683, 1998-
Ohio-601, 693 N.E.2d 276 (1998).
- 4 People ex rel. Bracher v. Orvis, 301 Ill. 350, 133 N.E. 787, 24 A.L.R. 325 (1921).
- 5 People ex rel. Bracher v. Orvis, 301 Ill. 350, 133 N.E. 787, 24 A.L.R. 325 (1921).
- 6 Baker v. Tax Commission, 520 P.2d 203 (Utah 1974).
- 7 Montana Nat. Bank of Billings v. Yellowstone County, Mont., 276 U.S. 499, 48 S. Ct. 331, 72 L. Ed. 673
(1928).
- 8 Creighton St. Joseph Regional Hosp. v. Nebraska Tax Equalization and Review Com'n, 260 Neb. 905, 620
N.W.2d 90 (2000).
- 9 In re Land Acquisition, L.L.C., 145 N.H. 492, 767 A.2d 948 (2000).
- 10 Westhaven, Inc. v. Wood County Bd. of Revision, 81 Ohio St. 3d 67, 1998-Ohio-446, 689 N.E.2d 38 (1998).
- 11 Simmons v. Cuyahoga County Bd. of Revision, 81 Ohio St. 3d 47, 1998-Ohio-443, 689 N.E.2d 22 (1998).
- 12 Simmons v. Cuyahoga County Bd. of Revision, 81 Ohio St. 3d 47, 1998-Ohio-443, 689 N.E.2d 22 (1998).
- 13 Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision, 87 Ohio St. 3d 305, 1999-Ohio-69, 720 N.E.2d
517 (1999).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government
Works.

72 Am. Jur. 2d State and Local Taxation § 686

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy


XLV. Abatement and Proceedings Therein

B. Powers, Duties, Functions, and Liabilities of Administrative Agencies and Boards

§ 686. Action after date for adjournment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2655, 2678

Under the facts and statutory provisions in most cases, the provisions limiting the time within which boards of tax review or equalization may act are mandatory, and such boards have no power to make changes in tax assessments after the time fixed by the statute.¹

Caution:

The county board of equalization has authority to hear an ad valorem tax protest beyond the statutory deadline for the adjournment of the session.² Passing of the statutory date for an adjournment of the county board of equalization, without more, is inadequate to give the taxpayer timely notice of the board's denial of the tax protest, as matter of due process, so as to start the running of a 10-day period for taking the appeal to district court.³ Thus, when a county board of equalization has concluded its last session to hear ad valorem tax protests on or before the statutory adjournment date, and notice of a decision on a taxpayer's protest is first given to the taxpayer after the statutory adjournment date, the 10-day period to commence an appeal to the district court begins to run on the date that the notice of the board's decision is mailed or delivered to the taxpayer.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [People ex rel. Brecheisen v. Board of Review of Lake County, 363 Ill. 106, 1 N.E.2d 402, 105 A.L.R. 614 \(1936\).](#)
- 2 [Larry Jones Intern. Ministries, Inc. v. Means, 1997 OK 125, 946 P.2d 669 \(Okla. 1997\).](#)
- 3 [Larry Jones Intern. Ministries, Inc. v. Means, 1997 OK 125, 946 P.2d 669 \(Okla. 1997\).](#)
- 4 [Larry Jones Intern. Ministries, Inc. v. Means, 1997 OK 125, 946 P.2d 669 \(Okla. 1997\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation Nine XLV C Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLV. Abatement and Proceedings Therein

C. Practice and Procedure

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2650](#), [2652](#), [2667](#), [2669](#), [2674](#) to [2676](#), [2680](#), [2720](#) to [2723](#)

A.L.R. Library

A.L.R. Index, Administrative Law

A.L.R. Index, Tax Court

West's A.L.R. Digest, [Taxation](#)  [2650](#), [2652](#), [2667](#), [2669](#), [2674](#) to [2676](#), [2680](#), [2720](#) to [2723](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 7](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 687

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLV. Abatement and Proceedings Therein

C. Practice and Procedure

1. In General

§ 687. Pleading

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) , [2667](#), [2674](#), [2675](#)

When a proceeding for the abatement of taxes reaches a judicial tribunal, the ordinary rules of pleading in civil actions are applicable.¹ However, the technicalities of pleadings should not defeat a review of the tax assessment.² The taxpayer must sufficiently complete the complaint form to invoke the jurisdiction of the board.³ However, the taxpayer is not required to provide additional information beyond the filing of a complaint.⁴

The failure to perform the statutory conditions is generally a bar to securing relief.⁵ Thus, the dismissal of a complaint for a taxpayer's failure to fully and properly complete a complaint⁶ or the dismissal of an appeal for a failure to follow the rules of a property tax commission are appropriate sanctions.⁷ Likewise, if the complaint does not meet jurisdictional requirements, the board must dismiss it because the complaint has not invoked the board's power to proceed to a consideration of the merits.⁸ When a complaint filed with a county board of revision is dismissed because it is jurisdictionally defective, a counter-complaint must also be dismissed because the counter-complaint does not vest a board of revision with jurisdiction independent of the original complaint.⁹

Practice Tip:

The trial court properly dismissed, for lack of subject-matter jurisdiction, an action by a farmer seeking the reinstatement of open-space property tax relief arising from his agricultural use of land where the farmer was in total noncompliance with the procedural rules requiring the payment of disputed amounts prior to an appeal of the assessment.¹⁰ However, the payment of the tax is not necessary before filing of a petition for abatement if it is paid prior to the actual granting of relief, under a statute providing that abatement may be granted if "on hearing" the court finds that the tax has been paid.¹¹

CUMULATIVE SUPPLEMENT

Cases:

Electric power distributor's error in including a transmission line it did not own as property subject to property tax to two towns was an error in assessment, not in valuation, and thus abatement claim filed by distributor to two towns for property tax abatement was not subject to a 185 day deadline; evidence showed that towns taxed line in question twice, once from distributor and once from line's proper owner. 36 Me. Rev. Stat. § 841. *Town of Eddington v. Maine*, 2017 ME 225, 174 A.3d 321 (Me. 2017).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 New England Mut. Life Ins. Co. v. Board of Assessors, 121 La. 1068, 47 So. 27 (1908).
- 2 Consolidated Edison Co. of New York v. State Bd. of Equalization and Assessment, 60 A.D.2d 356, 401 N.Y.S.2d 871 (3d Dep't 1978).
- 3 *Kalmbach Wagner Swine Research Farm v. Board of Revision of Wyandot County*, 81 Ohio St. 3d 319, 1998-Ohio-475, 691 N.E.2d 270 (1998).
- 4 *Kalmbach Wagner Swine Research Farm v. Board of Revision of Wyandot County*, 81 Ohio St. 3d 319, 1998-Ohio-475, 691 N.E.2d 270 (1998).
- 5 *Petition of Felton*, 79 Idaho 325, 316 P.2d 1064 (1957); *Bartlett v. Town of New Boston*, 77 N.H. 476, 93 A. 796 (1915).
- 6 *Sharon Village Ltd. v. Licking County Bd. of Revision*, 78 Ohio St. 3d 479, 1997-Ohio-197, 678 N.E.2d 932 (1997).
- 7 *Appeal of Fayetteville Hotel Associates*, 117 N.C. App. 285, 450 S.E.2d 568 (1994), decision *aff'd*, 342 N.C. 405, 464 S.E.2d 298 (1995).
- 8 *Elkem Metals Co., Ltd. Partnership v. Washington County Bd. of Revision*, 81 Ohio St. 3d 683, 1998-Ohio-601, 693 N.E.2d 276 (1998).
- 9 *C.I.A. Properties v. Cuyahoga Cty. Aud.*, 89 Ohio St. 3d 363, 2000-Ohio-192, 731 N.E.2d 680, 145 Ed. Law Rep. 476 (2000).
- 10 *Lawler v. Tarrant Appraisal Dist.*, 855 S.W.2d 269 (Tex. App. Fort Worth 1993).
- 11 *Hamilton Mfg. Co. v. City of Lowell*, 274 Mass. 477, 175 N.E. 73, 74 A.L.R. 1213 (1931).

72 Am. Jur. 2d State and Local Taxation § 688

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLV. Abatement and Proceedings Therein

C. Practice and Procedure

1. In General

§ 688. Pleading—Complaint must be filed by attorney

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2667, 2674

To be jurisdictionally valid, a complaint regarding a property tax assessment must be prepared and filed by an attorney authorized to practice law, and if the complaint is not prepared and filed by an attorney authorized to practice law, the board of revision does not have jurisdiction to hear evidence or to render a decision, and the complaint must be dismissed.¹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [C.I.A. Properties v. Cuyahoga Cty. Aud.](#), 89 Ohio St. 3d 363, 2000-Ohio-192, 731 N.E.2d 680, 145 Ed. Law Rep. 476 (2000); [Sharon Village Ltd. v. Licking County Bd. of Revision](#), 78 Ohio St. 3d 479, 1997-Ohio-197, 678 N.E.2d 932 (1997) (holding that preparing and filing a complaint with the board of tax revision on behalf of a taxpayer constitutes the practice of law).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 689

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLV. Abatement and Proceedings Therein

C. Practice and Procedure

1. In General

§ 689. Hearing

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2667](#), [2669](#), [2676](#)

The purpose of a hearing before a tax board with respect to the valuation of property is to determine the taxable value of the real property as of a given tax lien date, which does not involve the valuation at a prior tax lien date.¹ Questions of fact include the determination of the fair market value of property,² the choice of valuation methodology in assessing property,³ and whether property has been overvalued for tax assessment purposes.⁴ Moreover, a board may demand strict compliance with state requirements dealing with the filing of forms.⁵

A tax court has considerable discretion in granting or denying discovery requests, and such decisions by the tax court are reviewed under the abuse-of-discretion standard.⁶ The requirement that a witness must have personal knowledge of the facts about which he or she testifies is a substantive rule of law that the board should observe in conducting its hearings.⁷ However, a board may accept all, part,⁸ or none of an expert's valuation.⁹

Observation:

An appellate division error in substituting an erroneous methodology for the correct one to value real property for tax purposes justified a remittal rather than a reinstatement of the trial court judgment because the appellate division neither reviewed the trial court's findings of value nor made findings of its own.¹⁰

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 Fawn Lake Apts. v. Cuyahoga Cty. Bd. of Revision, 85 Ohio St. 3d 609, 1999-Ohio-323, 710 N.E.2d 681 (1999).
- 2 Salt Lake City Southern R. Co., Inc. v. Utah State Tax Com'n, 1999 UT 90, 987 P.2d 594, 90 A.L.R.5th 789 (Utah 1999).
- 3 Salt Lake City Southern R. Co., Inc. v. Utah State Tax Com'n, 1999 UT 90, 987 P.2d 594, 90 A.L.R.5th 789 (Utah 1999).
- 4 Konover v. Town of West Hartford, 242 Conn. 727, 699 A.2d 158 (1997).
- 5 Bitters v. Town of Newbold, 51 Wis. 2d 493, 187 N.W.2d 339 (1971).
- 6 Almor Corp. v. County of Hennepin, 566 N.W.2d 696 (Minn. 1997).
- 7 Dublin City School Dist. Bd. of Educ. v. Franklin County Bd. of Revision, 80 Ohio St. 3d 450, 1997-Ohio-327, 687 N.E.2d 422 (1997).
- 8 Freshwater v. Belmont County Bd. of Revision, 80 Ohio St. 3d 26, 1997-Ohio-362, 684 N.E.2d 304 (1997).
- 9 Westhaven, Inc. v. Wood County Bd. of Revision, 81 Ohio St. 3d 67, 1998-Ohio-446, 689 N.E.2d 38 (1998).
- 10 Saratoga Harness Racing Inc. v. Williams, 91 N.Y.2d 639, 674 N.Y.S.2d 263, 697 N.E.2d 164 (1998).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 690

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLV. Abatement and Proceedings Therein

C. Practice and Procedure

1. In General

§ 690. Evidence

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2667, 2720, 2721

The board of tax appeals (BTA) need not comply with the rules of evidence, but these rules may guide the BTA in conducting its hearings.¹ The board is vested with wide discretion in determining the weight to be given to the evidence and to the credibility of witnesses which come before it,² and it is not required to adopt the appraisal methodology espoused by any expert or witness.³ A board of revision may not dismiss a complaint for the failure of the taxpayer to provide supplemental information, and must find value based on the evidence presented, but may affirm the auditor's value if the taxpayer does not sustain the burden of proof.⁴

To prevail in a petition for abatement, the petitioner must prove that his or her tax was greater than it should have been with respect to the taxes of other property owners in the taxing district; therefore, the question to be tried is whether the petitioner is unlawfully or unjustly taxed as between the petitioner and the other taxpayers.⁵ A taxpayer's failure to file documents subsequent to the complaint does not divest the board of revision of jurisdiction unless a statute or constitution clearly mandates the filing.⁶

When the evidence presented to the board of revision or the board of tax appeals contradicts the auditor's determination in whole or in part, and when no evidence has been adduced to support the auditor's valuation, the board of tax appeals may not simply revert to the auditor's determination; whenever it does so, the board of tax appeals is acting unlawfully by making a finding of value that is affirmatively contradicted by the only evidence in the record.⁷

CUMULATIVE SUPPLEMENT

Cases:

The Board of Tax Review did not abuse its discretion by discounting the reliability of taxpayer's appraisal report in Board's final determination upholding assessments on taxpayer's real property, where taxpayer's appraisal report explained that it did not use the cost approach to better reflect the behavior of market participants, who would not consider replacement cost in a weakened market, but the Board noted that the report also explicitly stated that county's market conditions were improving during the years at issue, and the Board noted that taxpayer's appraisal report gave only generalized and conclusory explanations for the large adjustments it made to the national and regional comparable properties it used in its sales comparison approach. [CVS Corporation v. Monroe County Assessor](#), 83 N.E.3d 1286 (Ind. Tax Ct. 2017).

Board of Tax and Land Appeals (BTLA) had sufficient evidence from which it could properly reject Department of Revenue Administration (DRA) appraisals and allocated values in electric cooperative's tax abatement claim; BTLA examined DRA's appraisals, heard testimony from DRA's appraiser, and heard testimony from municipalities' experts that criticized DRA's procedures, assumptions, calculations, and conclusions, and BTLA was not required to accept testimony from DRA's appraiser that his allocation procedure based on original cost was proper. [Appeal of New Hampshire Electric Cooperative, Inc.](#), 164 A.3d 1013 (N.H. 2017).

On review by the Property Tax Commission of a county's ad valorem property tax valuation, to determine the appropriate appraisal methodology under the given circumstances, the Commission must hear the evidence of both sides to determine its weight and sufficiency and the credibility of witnesses, to draw inferences, and to appraise conflicting and circumstantial evidence, all in order to determine whether the county met its burden. [In re Interstate Outdoor Inc.](#), 763 S.E.2d 172 (N.C. Ct. App. 2014).

Ample evidence supported Board of Tax Appeals' inference of a typographical error in portfolio-sale agreement's exclusion of parcel number from contractual allocation, in proceedings challenging whether sale price of shopping center represented its value for tax purposes; deeds and property-record cards confirmed that the parcel was sold as part of the total sale and that the parcel number on the contractual allocation was a typographical error. [Beavercreek Towne Station, L.L.C. v. Greene County Board of Revision](#), 154 Ohio St. 3d 274, 2018-Ohio-4300, 113 N.E.3d 539 (2018).

Taxpayer's evidence did not demonstrate correctness of his proposed valuation of \$40,000 for residential property that fiscal officer had valued at \$104,100; taxpayer's testimony that he could not sell property for \$70,000 was not substantiated and did not prove asserted value, taxpayer's evidence of sales data offered nothing to confirm that sales listed actually occurred and contained no adjustments to relate the purported sales prices to the subject property, taxpayer's testimony that property was in fair condition and documentation of multiple housing-code violations did not support proposed valuation, and taxpayer's purchase of the property three-years prior was too remote to be probative of the property's value. [Schutz v. Cuyahoga County Board of Revision](#), 153 Ohio St. 3d 23, 2018-Ohio-1588, 100 N.E.3d 362 (2018).

Reinstatement of county auditor's original valuation of real property for property tax purposes, rather than remand to Board of Tax Appeals for independent determination of value, was warranted following determination that Board erred in applying *Bedford* rule, under which city board of education could not rely on auditor's valuation as default valuation on appeal after board of revision reduced valuation based on owner's evidence from comparable sale, though property owner also made qualitative statements regarding property; record contained no probative evidence tending to negate auditor's valuation, qualitative statements did not establish actual value, and remand would be futile, as Board had already ruled out comparable sale, which was only affirmative evidence of value. [South-Western City Schools Board of Education v. Franklin County Board of Revision](#), 152 Ohio St. 3d 543, 2018-Ohio-918, 98 N.E.3d 266 (2018).

Appraisal report on property prepared for financing purposes during tax year 2009 was not competent evidence of value of subject real property that affirmatively negate assessor's valuation for tax year 2012, especially in absence of appraiser's testimony about facts and methodology underlying appraisal, and taxpayer's failure to explain how 2009 appraisal applied as of 2012 tax lien date. [Musto v. Lorain Cty. Bd. of Revision](#), 148 Ohio St. 3d 456, 2016-Ohio-8058, 71 N.E.3d 279 (2016).

School district failed to establish that expert testimony of its certified real estate appraiser, which was based on his research into market data, was sufficient to overcome prima facie case established by county board of assessment that correct assessment of value of marina was \$635,200, in yacht club's action challenging property tax assessment for marina yacht club constructed on property leased by port authority, in which school district intervened; school district presented no evidence that analysis offered by board's appraiser concerning market value of marina was flawed. [53 Pa. Cons. Stat. Ann. § 8842. Erie-Western Pennsylvania Port Authority v. Erie County Board of Assessment Appeals](#), 213 A.3d 1041 (Pa. Commw. Ct. 2019).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Soin v. Greene Cty. Bd. of Revision](#), 110 Ohio St. 3d 408, 2006-Ohio-4708, 853 N.E.2d 1165 (2006).
- 2 [Zell v. Hamilton Cty. Bd. of Revision](#), 78 Ohio St. 3d 330, 1997-Ohio-213, 677 N.E.2d 1201 (1997).
- 3 [Soin v. Greene Cty. Bd. of Revision](#), 110 Ohio St. 3d 408, 2006-Ohio-4708, 853 N.E.2d 1165 (2006).
- 4 [Kalmbach Wagner Swine Research Farm v. Board of Revision of Wyandot County](#), 81 Ohio St. 3d 319, 1998-Ohio-475, 691 N.E.2d 270 (1998).
- 5 [Gail C. Nadeau 1994 Trust v. City of Portsmouth](#), 155 N.H. 810, 931 A.2d 568 (2007).
- 6 [Kalmbach Wagner Swine Research Farm v. Board of Revision of Wyandot County](#), 81 Ohio St. 3d 319, 1998-Ohio-475, 691 N.E.2d 270 (1998).
- 7 [Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision](#), 113 Ohio St. 3d 281, 2007-Ohio-1948, 865 N.E.2d 22 (2007).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 691

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLV. Abatement and Proceedings Therein

C. Practice and Procedure

1. In General

§ 691. Evidence—Presumptions and burden of proof

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2667](#), [2722](#), [2723](#)

The burden of proof with respect to a challenge to a tax valuation is on the party asserting an improper valuation;¹ how the taxpayer attempts to meet its burden of proof is a matter for that taxpayer's judgment.² When a taxpayer appeals from a town's denial of an abatement, the commissioners begin their review of the assessment with the presumption that the assessor's valuation of the property is valid.³ To overcome that presumption, the taxpayer has the initial burden of presenting credible, affirmative evidence to meet his or her burden of persuading the commissioners that the assessor's valuation was manifestly wrong⁴ or faulty and incorrect⁵ and that the taxpayer's opinion of the value of the residential property is the value that the board should accept.⁶ If, but only if, the taxpayer meets that burden, the commissioners must engage in an independent determination of the fair market value based on a consideration of all relevant evidence of just value.⁷ Thus, the plaintiffs in a tax-abatement case have the burden of proving disproportionality with respect to other property in the jurisdiction by a preponderance of the evidence.⁸ The taxpayer has the burden to show in what manner and to what extent the tax commissioner's investigation and audit, and the findings and assessments based thereon, were faulty and incorrect.⁹ Simply asserting that valuation was in excess of true and full value does not make it so.¹⁰ The taxpayer must demonstrate that the tax assessment was unjust and inequitable¹¹ or manifestly wrong¹² and that his or her property was assessed disproportionately to the assessment of property generally in the jurisdiction.¹³ The taxpayer must show, with reasonable accuracy, how much should be deducted from the amount fixed by the assessors, and where this is not shown, the assessment must stand.¹⁴

Caution:

No presumption of correctness may be accorded to a property tax assessment that does not apply the principles in the state property tax assessment manual.¹⁵

Observation:

As to the fair apportionment under a franchise tax statute, a taxpayer has the burden of proof and must demonstrate that there is no rational relationship between the income attributed to the taxing state and the intrastate values of the enterprise by proving that the income apportioned to the taxing state under the statute is out of all appropriate proportion to the business transacted in that state.¹⁶

CUMULATIVE SUPPLEMENT

Cases:

Party challenging alleged tax or fee bears the burden of demonstrating the invalidity of the exaction. [Easthampton Sav. Bank v. City of Springfield](#), 470 Mass. 284, 21 N.E.3d 922 (2014).

The taxpayer retains burden of proof in a tax proceeding to rebut presumptive validity of Commissioner of Revenue's sales tax assessment order because the taxpayer is in the best position to produce the records and information relevant to the matter in dispute. [Conga Corp. v. Commissioner of Revenue](#), 868 N.W.2d 41 (Minn. 2015).

The burden of showing a property tax valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board of equalization. West's [Neb.Rev.St. § 77–5016\(9\)](#). [JQH La Vista Conference Center Development LLC v. Sarpy County Bd. of Equalization](#), 285 Neb. 120, 825 N.W.2d 447 (2013).

When cases are appealed from a board of revision to the Board of Tax Appeals (BTA), the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase in, or a decrease from, the value determined by the board of revision; by its nature, that burden calls for the BTA appellant to come forward and demonstrate that the value it advocates is a correct value. [Shinkle v. Ashtabula Cty. Bd. of Revision](#), 2013-Ohio-397, 985 N.E.2d 1243 (Ohio 2013).

Where the state appraiser's valuation of property for taxation is supported by some evidence from the record, the appellant bears the burden of demonstrating that the exercise of discretion was clearly erroneous. [Hoiska v. Town of East Montpelier](#), 2014 VT 80, 101 A.3d 890 (Vt. 2014).

In a taxpayer's appeal of a town's assessment of real property, the ultimate burden of persuading the court that the town's appraisal is incorrect remains with the taxpayer. [Vanderminden v. Town of Wells](#), 2013 VT 49, 75 A.3d 598 (Vt. 2013).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Williams Production RMT Co. v. Wyoming Dept. of Revenue](#), 2008 WY 155, 197 P.3d 1258 (Wyo. 2008).
- 2 [Snively v. Erie County Bd. of Revision](#), 78 Ohio St. 3d 500, 1997-Ohio-28, 678 N.E.2d 1373 (1997).
- 3 [Yusem v. Town of Raymond](#), 2001 ME 61, 769 A.2d 865 (Me. 2001); [Boston Gas Co. v. Board of Assessors of Boston](#), 458 Mass. 715, 941 N.E.2d 595 (2011); [Ford Motor Credit Co. v. Chesterfield County](#), 281 Va. 321, 707 S.E.2d 311 (2011); [In re Tax Assessment of Foster Foundation's Woodlands Retirement Community](#), 223 W. Va. 14, 672 S.E.2d 150 (2008).
- 4 [Yusem v. Town of Raymond](#), 2001 ME 61, 769 A.2d 865 (Me. 2001).
- 5 [Am. Fiber Sys., Inc. v. Levin](#), 125 Ohio St. 3d 374, 2010-Ohio-1468, 928 N.E.2d 695 (2010).
- 6 [Simmons v. Cuyahoga County Bd. of Revision](#), 81 Ohio St. 3d 47, 1998-Ohio-443, 689 N.E.2d 22 (1998).
- 7 [Yusem v. Town of Raymond](#), 2001 ME 61, 769 A.2d 865 (Me. 2001).
- 8 [Tennessee Gas Pipeline Co. v. Town of Hudson](#), 145 N.H. 598, 766 A.2d 672 (2000).
[As to disproportional valuation, see § 682.](#)
- 9 [Maxxim Med., Inc. v. Tracy](#), 87 Ohio St. 3d 337, 1999-Ohio-136, 720 N.E.2d 911 (1999).
- 10 [Richter Enterprises, Inc. v. Sully County](#), 1997 SD 61, 563 N.W.2d 841 (S.D. 1997).
- 11 [Richter Enterprises, Inc. v. Sully County](#), 1997 SD 61, 563 N.W.2d 841 (S.D. 1997).
- 12 [UAH-Hydro Kennebec, L.P. v. Town of Winslow](#), 2007 ME 36, 921 A.2d 146 (Me. 2007).
- 13 [Sprague Energy Corp. v. Town of Newington](#), 142 N.H. 804, 710 A.2d 1005 (1998).
- 14 [People ex rel. Central Hudson Gas & Electric Co. v. State Tax Commission](#), 247 N.Y. 281, 160 N.E. 371, 57 A.L.R. 374 (1928).
- 15 [Walgreen Co. v. City of Madison](#), 2008 WI 80, 311 Wis. 2d 158, 752 N.W.2d 687 (2008).
- 16 [Container Corp. of America v. Franchise Tax Bd.](#), 463 U.S. 159, 103 S. Ct. 2933, 77 L. Ed. 2d 545 (1983).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 692

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLV. Abatement and Proceedings Therein


C. Practice and Procedure

1. In General

§ 692. Judgments, orders, and decrees

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2667, 2680

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 7](#) (Order—For abatement of wrongful assessment—General form)

The rules applicable to the judgments of courts in general apply to judgments rendered on appeal to a court from a statutory proceeding for the abatement of taxes in which the relief sought by the taxpayer has been granted.¹ Accordingly, after the term of court at which such a judgment was entered has ended, the jurisdiction of the court to set it aside is gone, and a subsequent order attempting to annul such judgment which was entered without service of notice upon the taxpayer is void and of no effect.²

Practice Tip:

An order granting summary judgment to a taxpayer on the issue of whether the county assessor satisfied statutory certification requirements does not fully dispose of the litigation where the issue of valuation remains for trial, and thus, the order is not a final, appealable order.³

The tax commissioner's determination is, for the purposes of judicial review, presumed valid.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Eureka Pipe Line Co. v. Riggs, 75 W. Va. 353, 83 S.E. 1020 \(1914\).](#)
- 2 [Eureka Pipe Line Co. v. Riggs, 75 W. Va. 353, 83 S.E. 1020 \(1914\).](#)
- 3 [Brookfield Trade Center, Inc. v. County of Ramsey, 609 N.W.2d 868 \(Minn. 2000\).](#)
- 4 [Palace Laundry, Inc. v. Chesterfield County, 276 Va. 494, 666 S.E.2d 371 \(2008\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 693

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLV. Abatement and Proceedings Therein

C. Practice and Procedure

2. Parties

§ 693. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2650

A.L.R. Library

[Standing of one taxpayer to complain of underassessment or nonassessment of property of another for state and local taxation, 9 A.L.R.4th 428](#)

To have standing to file a valuation complaint as the owner of real property, a party must own real property in the county at the time that the complaint is filed.¹ To be the "owner" of real property, and thus have standing to file a valuation complaint, the person must hold legal title to, and not simply an equitable interest in, the property.²

A person who files a complaint to challenge the valuation of the property of another has the burden to prove standing.³ According to one view, a taxpayer can have standing to challenge the valuation of real property not owned by the taxpayer as long as the taxpayer owns taxable real property in the county when a complaint is filed.⁴ According to another view, an individual taxpayer plaintiff lacks standing to challenge other taxpayers' property tax assessments as he or she is not injured personally by others' assessment calculations.⁵

Practice Tip:

The standing of a person seeking a reduction of a property valuation, for tax purposes, is a jurisdictional question which may be raised any time during the proceeding.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Victoria Plaza Ltd. Liab. Co. v. Cuyahoga Cty. Bd. of Revision](#), 86 Ohio St. 3d 181, 1999-Ohio-148, 712 N.E.2d 751 (1999).
As to the necessity of showing the plaintiff's interest as a condition to his or her right to maintain a civil action, generally, see [Am. Jur. 2d, Parties](#) §§ 30 to 42.
- 2 [Victoria Plaza Ltd. Liab. Co. v. Cuyahoga Cty. Bd. of Revision](#), 86 Ohio St. 3d 181, 1999-Ohio-148, 712 N.E.2d 751 (1999).
- 3 [Society Nat. Bank v. Wood County Bd. of Revision](#), 81 Ohio St. 3d 401, 1998-Ohio-436, 692 N.E.2d 148 (1998).
As to the underassessment or nonassessment of another person's property, see [Am. Jur. 2d, Taxpayers' Actions](#) § 20.
- 4 [Victoria Plaza Ltd. Liab. Co. v. Cuyahoga Cty. Bd. of Revision](#), 86 Ohio St. 3d 181, 1999-Ohio-148, 712 N.E.2d 751 (1999) (holding, however, that the holder of an equitable interest in real property does not have standing to file a complaint regarding the valuation of the property for tax purposes).
- 5 [State ex rel. Kansas City Power & Light Co. v. McBeth](#), 322 S.W.3d 525, 261 Ed. Law Rep. 853 (Mo. 2010).
- 6 [Buckeye Foods v. Cuyahoga County Bd. of Revision](#), 78 Ohio St. 3d 459, 1997-Ohio-199, 678 N.E.2d 917 (1997).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 694

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLV. Abatement and Proceedings Therein

C. Practice and Procedure

2. Parties

§ 694. Person aggrieved

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2650

A taxpayer must be deemed aggrieved by a property tax assessment in order to maintain an appeal to the Tax Appeal Court.¹ The injury requirement for standing to file a tax appeal assures that rule review at the board of tax appeals involves a genuine case or controversy.²

The words "person aggrieved" in a statutory provision for judicial or administrative review at the instance of a person aggrieved by the assessor's refusal to abate a tax mean one whose pecuniary interests are or may be adversely affected.³ A taxpayer is "aggrieved" by an assessment of a state tax when it receives notice of that assessment, rather than when the assessment is made, and thus, the two-year period in which the taxpayer may apply for the abatement runs from the date of notice rather than from the date of assessment.⁴ A party aggrieved by an assessment of taxes must first file an appeal with the local assessor and then either seek equitable relief or file an appeal pursuant to a statute authorizing a petition in superior court for relief from the assessment.⁵

CUMULATIVE SUPPLEMENT

Cases:

A person with ownership rights in a property must be in occupancy of the subject property in order to petition under the small claims assessment review program. [McKinney's RPTL § 730\(1\)\(b\)\(i\)](#). [Manouel v. Board of Assessors](#), 25 N.Y.3d 46, 29 N.E.3d 881 (2015).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Maile Sky Court Co., Ltd. v. City and County of Honolulu](#), 85 Haw. 36, 936 P.2d 672 (1997), as amended, (May 6, 1997).
- 2 [Ohio Apt. Assn. v. Levin](#), 127 Ohio St. 3d 76, 2010-Ohio-4414, 936 N.E.2d 919 (2010).
- 3 [Hamilton Mfg. Co. v. City of Lowell](#), 274 Mass. 477, 175 N.E. 73, 74 A.L.R. 1213 (1931).
- 4 [EMC Corp. v. Commissioner of Revenue](#), 433 Mass. 568, 744 N.E.2d 55 (2001).
- 5 [Nunes v. Marino](#), 707 A.2d 1239 (R.I. 1998).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 695

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLV. Abatement and Proceedings Therein

C. Practice and Procedure

2. Parties

§ 695. Estoppel, waiver, or loss of right

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2652

Under various circumstances, the right to maintain an abatement proceeding or the right to secure relief therein may be lost to particular taxpayers under legal principles of estoppel or waiver or principles analogous thereto, depending upon the particular facts and circumstances of the individual case.¹ The result indicated has been reached in cases where the assessment challenged was based on a statement or return made to the assessors by the complainant himself or herself.² Thus, one who returns as his or her own the property of another cannot object when such property is assessed in his or her name.³

CUMULATIVE SUPPLEMENT

Cases:

Mere acceptance or acquiescence in returns filed by a taxpayer in previous years creates no estoppel against the Commissioner of Taxes nor does the overlooking of an error in a return upon audit create any such estoppel. [Quazzo v. Department of Taxes, 2014 VT 81, 103 A.3d 458 \(Vt. 2014\)](#).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Kentucky River Coal Corp. v. Knott County, 245 Ky. 822, 54 S.W.2d 377 \(1932\); Blake v. Young, 1927 OK 454, 128 Okla. 153, 261 P. 923 \(1927\).](#)
- 2 [Kentucky River Coal Corp. v. Knott County, 245 Ky. 822, 54 S.W.2d 377 \(1932\); Blake v. Young, 1927 OK 454, 128 Okla. 153, 261 P. 923 \(1927\).](#)
- 3 [Union School Dist. of Guilford v. Bishop, 76 Conn. 695, 58 A. 13 \(1904\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation Nine XLV D Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy


XLV. Abatement and Proceedings Therein

D. Judicial Redress

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2640](#), [2680](#), [2692](#), [2693](#), [2698](#), [2699\(5\)](#), [2699\(7\)](#), [2699\(8\)](#), [2699\(11\)](#), [2704](#), [2706](#), [2709\(1\)](#), [2709\(2\)](#)

A.L.R. Library

A.L.R. Index, Administrative Law

A.L.R. Index, Tax Court

West's A.L.R. Digest, [Taxation](#)  [2640](#), [2680](#), [2692](#), [2693](#), [2698](#), [2699\(5\)](#), [2699\(7\)](#), [2699\(8\)](#), [2699\(11\)](#), [2704](#), [2706](#), [2709\(1\)](#), [2709\(2\)](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 25, 27 to 29](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 696

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLV. Abatement and Proceedings Therein


D. Judicial Redress

1. In General

§ 696. Jurisdiction and powers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2640](#), [2692](#), [2693](#), [2699\(5\)](#), [2699\(7\)](#), [2699\(8\)](#), [2699\(11\)](#), [2704](#), [2706](#), [2709\(1\)](#), [2709\(2\)](#)

There is no constitutional right to a judicial review of an assessment of taxes.¹ The right is purely statutory and must be exercised in the manner prescribed by the statute.² Thus, the manner in which courts are to review proceedings for the abatement of taxes is entirely within legislative control,³ including the particular courts to which an appeal may or must be taken;⁴ the existence or nonexistence of prejudicial error in a specified action of an administrative agency,⁵ such as its refusal to make the requested findings;⁶ the party or parties entitled to take an appeal;⁷ the conclusiveness of the findings of the administrative agency;⁸ the manner of certifying to the court the evidence presented before the administrative agency;⁹ and the effect of an appeal by the taxpayer to bring before the court the rulings of the administrative tribunal favorable to the taxpayer.¹⁰

The state supreme court leaves determinations of basic factual matters to the board of tax appeals and affirms its determinations if they are supported by sufficient, probative evidence of record.¹¹ That is, the board is responsible for determining factual issues, and if the record contains reliable and probative support, the supreme court will affirm the board's decision on appeal.¹² In reviewing board decisions, the supreme court determines whether the board's decision is reasonable and lawful.¹³ On appeal from a decision of the county board of revision as to a property's taxable value, a trial court must independently weigh and evaluate all evidence properly before it.¹⁴

CUMULATIVE SUPPLEMENT

Cases:

Because of the separation of powers doctrine, it is not within the province of state courts to assess property; courts can only review the assessments and reverse them and send them back to the executive department when they are clearly erroneous, manifestly excessive, or confiscatory. [McWilliams v. Pope County Bd. of Equalization](#), 2012 Ark. 427, 424 S.W.3d 837 (2012).

The whole record test does not allow the reviewing court to replace the Property Tax Commission's judgment as between two reasonably conflicting views, even though the court could justifiably have reached a different result had the matter been before it de novo. [In re Parkdale Mills](#), 770 S.E.2d 152 (N.C. Ct. App. 2015).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Ross Jewelers v. State](#), 260 Ala. 682, 72 So. 2d 402, 43 A.L.R.2d 851 (1953).
- 2 [Ross Jewelers v. State](#), 260 Ala. 682, 72 So. 2d 402, 43 A.L.R.2d 851 (1953).
- 3 [In re First Nat. Bank](#), 25 N.D. 635, 146 N.W. 1064 (1898).
- 4 [In re Masonic Temple Soc.](#), 90 W. Va. 441, 111 S.E. 637, 22 A.L.R. 892 (1922).
- 5 [Commissioner of Corporations and Taxation v. Ford Motor Co.](#), 308 Mass. 558, 33 N.E.2d 318, 139 A.L.R. 936 (1941).
- 6 [Waltham Watch & Clock Co. v. City of Waltham](#), 272 Mass. 396, 172 N.E. 579, 71 A.L.R. 960 (1930).
- 7 [State v. Ide Cotton Mills](#), 175 Ala. 539, 57 So. 481 (1912).
- 8 [Commissioner of Corporations and Taxation v. Ford Motor Co.](#), 308 Mass. 558, 33 N.E.2d 318, 139 A.L.R. 936 (1941).
- 9 [In re Masonic Temple Soc.](#), 90 W. Va. 441, 111 S.E. 637, 22 A.L.R. 892 (1922).
- 10 [Central Life Assur. Soc. v. City of Des Moines](#), 212 Iowa 1254, 238 N.W. 535, 78 A.L.R. 551 (1931).
- 11 [TBC Westlake, Inc. v. Hamilton County Bd. of Revision](#), 81 Ohio St. 3d 58, 1998-Ohio-445, 689 N.E.2d 32 (1998).
- 12 [Nestle R&D Ctr., Inc. v. Levin](#), 122 Ohio St. 3d 22, 2009-Ohio-1929, 907 N.E.2d 714 (2009).
- 13 [Parma Hts. v. Wilkins](#), 105 Ohio St. 3d 463, 2005-Ohio-2818, 828 N.E.2d 998 (2005).
- 14 [Eastbrook Farms, Inc. v. Warren Cty. Bd. of Revision](#), 194 Ohio App. 3d 193, 2011-Ohio-2103, 955 N.E.2d 418 (12th Dist. Warren County 2011).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 697

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLV. Abatement and Proceedings Therein

D. Judicial Redress

1. In General

§ 697. Failure to invoke or exhaust administrative remedy

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2698

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 25](#) (Answer—Defense—Failure to exhaust administrative remedies)

A taxpayer seeking judicial relief from an erroneous assessment must exhaust his or her remedies before the administrative body empowered initially to correct the error prior to seeking relief in court.¹ However, taxpayers are not required to exhaust administrative remedies before bringing or intervening in an action challenging property tax assessments on the ground that they were void and illegal where the questions of law and of statutory and constitutional construction preponderate over questions of fact.²

Observation:

A taxpayer was not required to exhaust administrative remedies before obtaining judicial relief from a supplemental tax bill because the only issue on appeal was whether the city had the statutory authority to issue the supplemental bill, which is a question of law.³ Also, the exhaustion of administrative remedies is not required where the claim is judicial in nature, such as where the allegation is that an administrative official or board acted without authority or took action that was permeated with fraud, corruption, or conduct so oppressive, arbitrary, or capricious as to amount to fraud in connection with the levy of any tax, charge, or assessment.⁴

The failure to exhaust administrative remedies effectively waives the right to protest an assessment in a judicial forum.⁵

CUMULATIVE SUPPLEMENT

Cases:

County's audit finding stating "No Deficiency" did not estop county from relying on taxpayer's failure to exhaust administrative remedies, in taxpayer's action against county seeking refund of property taxes on two aircraft, even if taxpayer understood finding to mean that county had cancelled tax bills at issue, where, when taxpayer raised point with county, county official explained that a finding of no deficiency meant merely that county had determined its previous assessment was correct, and on more than one occasion, county officials told taxpayer that proper means to challenge assessment was through administrative appeal. [Machavia, Inc. v. County of Los Angeles](#), 19 Cal. App. 5th 1050, 228 Cal. Rptr. 3d 313 (2d Dist. 2017).

District court lacked subject matter jurisdiction over taxpayer's claims against county for unjust enrichment and rescission of tax deed due to a failure by taxpayer to exhaust the relevant administrative remedies; the claims would have required the court to make a determination that the Department of Revenue's (DOR) appraisals and assessments were erroneous, without any DOR reappraisal or reassessment or ruling from the State or county tax appeals boards. [Mont. Code Ann. §§ 15-16-603\(1\), 15-16-604. K & J Investments, LLC v. Flathead County Board of County Commissioners](#), 2020 MT 277, 476 P.3d 20 (Mont. 2020).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Berrum v. Otto](#), 255 P.3d 1269, 127 Nev. Adv. Op. No. 30 (Nev. 2011); [Steinhart v. County of Los Angeles](#), 47 Cal. 4th 1298, 104 Cal. Rptr. 3d 195, 223 P.3d 57 (2010); [Millennium Park Joint Venture, LLC v. Houlihan](#), 241 Ill. 2d 281, 349 Ill. Dec. 898, 948 N.E.2d 1 (2010); [New England Legal Foundation v. City of Boston](#), 423 Mass. 602, 670 N.E.2d 152 (1996).
- 2 [Mingledorff v. Vaughan Regional Medical Center, Inc.](#), 682 So. 2d 415 (Ala. 1996).
- 3 [Pheasant Lane Realty Trust v. City of Nashua](#), 143 N.H. 140, 720 A.2d 73 (1998).
- 4 [Barnes v. Board of County Com'rs of Cowley County](#), 293 Kan. 11, 259 P.3d 725 (2011).
- 5 [Colonial Pipeline Co. v. Morgan](#), 263 S.W.3d 827 (Tenn. 2008).

72 Am. Jur. 2d State and Local Taxation § 698

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLV. Abatement and Proceedings Therein

D. Judicial Redress

2. Conclusiveness and Finality of Administrative Action

§ 698. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2680

The acts of a tax board of review should be upheld unless they are clearly contrary to statutory provisions and substantially prejudicial to the rights of the taxpayer.¹ If there are any facts, or reasonable inferences from facts, to support the state tax commission's deficiency assessment, the assessment should be confirmed.² The taxpayer bears the burden of demonstrating that the state board of tax commissioners' final determination is invalid³ or unreasonable.⁴

Observation:

A taxpayer's failure to meet the burden of proof before the board of revision does not justify a dismissal of the property valuation complaint.⁵ It will, however, justify a board of revision in fixing the valuation at an amount assessed by a county auditor.⁶

If an action merely questions the propriety of the board of equalization's refusal to correct an erroneous assessment, the court cannot try de novo the question of the alleged overvaluation but is limited to a consideration of the proceedings before the board.⁷ However, if the action involves a question of legality or constitutionality of the assessment and not a question of valuation, the court can try de novo the question presented to it.⁸

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 Yunker Bros. v. Zirbel, 234 Iowa 269, 12 N.W.2d 219, 151 A.L.R. 242 (1943).
- 2 Levin v. Gallman, 42 N.Y.2d 32, 396 N.Y.S.2d 623, 364 N.E.2d 1316 (1977).
- 3 State Bd. of Tax Com'rs v. Indianapolis Racquet Club, Inc., 743 N.E.2d 247 (Ind. 2001).
- 4 Firethorn Inv. v. Lancaster County Bd. of Equalization, 261 Neb. 231, 622 N.W.2d 605 (2001).
- 5 Snively v. Erie County Bd. of Revision, 78 Ohio St. 3d 500, 1997-Ohio-28, 678 N.E.2d 1373 (1997).
- 6 Snively v. Erie County Bd. of Revision, 78 Ohio St. 3d 500, 1997-Ohio-28, 678 N.E.2d 1373 (1997).
- 7 Pacific Grove-Asilomar Operating Corp. v. County of Monterey, 43 Cal. App. 3d 675, 117 Cal. Rptr. 874 (1st Dist. 1974).
- 8 Pacific Grove-Asilomar Operating Corp. v. County of Monterey, 43 Cal. App. 3d 675, 117 Cal. Rptr. 874 (1st Dist. 1974).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 699

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLV. Abatement and Proceedings Therein

D. Judicial Redress

2. Conclusiveness and Finality of Administrative Action

§ 699. Fraudulent, arbitrary, or illegal conduct

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2680

The state supreme court will grant a taxpayer relief from an assessment when the valuation fixed by an assessor is manifestly excessive, fraudulent or oppressive, or arbitrary, capricious, and erroneous, resulting in discrimination against the taxpayer.¹ An arbitrary taxation appraisal is one that fails to reflect the fair-market or full-cash value of the property.²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Greenfield Village Apartments, L.P. v. Ada County](#), 130 Idaho 207, 938 P.2d 1245 (1997).

² [Kimbrough v. Idaho Bd. of Tax Appeals](#), 150 Idaho 417, 247 P.3d 644 (2011).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 700

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLV. Abatement and Proceedings Therein

D. Judicial Redress

2. Conclusiveness and Finality of Administrative Action

§ 700. Express statutory authority

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2680

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 27](#) (Judgment or decree—Compelling abatement of wrongful assessment)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 28](#) (Judgment or decree—Setting aside assessment on property located outside jurisdiction of taxing district)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 29](#) (Judgment or decree—Confirming assessment)

If the legislature especially empowers the courts to give relief against erroneous judgments of assessing bodies, a taxpayer may have judicial redress against an allegedly excessive or illegal tax assessment despite previous administrative action.¹ Even in such a case, however, the courts can act only in the manner provided by the statute and under whatever conditions are prescribed therein.²

The general rule as to the conclusiveness against judicial review of the decisions of an assessing body is not applicable to a statutory appeal to the courts from the action of either the original assessing officers or the administrative agencies authorized to correct or review assessments.³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [In re Blatt](#), 41 N.M. 269, 67 P.2d 293, 110 A.L.R. 656 (1937); [Wadhams & Co. v. State Tax Commission](#), 202 Or. 132, 273 P.2d 440 (1954); [Sioux Falls Savings Bank v. Minnehaha County](#), 29 S.D. 146, 135 N.W. 689 (1912).
- 2 [In re Blatt](#), 41 N.M. 269, 67 P.2d 293, 110 A.L.R. 656 (1937); [Wadhams & Co. v. State Tax Commission](#), 202 Or. 132, 273 P.2d 440 (1954).
- 3 [Board of Com'rs of Finney County v. Bullard](#), 77 Kan. 349, 94 P. 129 (1908); [Harrington v. Glidden](#), 179 Mass. 486, 61 N.E. 54 (1901), [aff'd](#), 189 U.S. 255, 23 S. Ct. 574, 47 L. Ed. 798 (1903).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation Nine XLVI A Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLVI. Equalization of Assessments

A. In General

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 🔑 2623, 2631, 2632

A.L.R. Library

A.L.R. Index, Administrative Law

A.L.R. Index, Assessments

A.L.R. Index, Tax Court

West's A.L.R. Digest, [Taxation](#) 🔑 2623, 2631, 2632

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 6, 23](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 701

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLVI. Equalization of Assessments

A. In General

§ 701. Constitutionality and statutory provisions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2623

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 6](#) (Petition or application—By municipal officer—To review equalization proceedings)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 23](#) (Complaint, petition, or declaration—Allegation—Failure to equalize assessments)

The adjustment and equalization of valuation of real and personal properties of all counties of the state must be made on an annual and uniform basis.¹ Notwithstanding the statutory duty of a county assessor to initially set an assessment percentage on all property within the county, it is an overriding constitutional and statutory duty of the state board of equalization to make such adjustments as would achieve uniformity and equality of taxation on a state-wide basis.² If the state board of equalization and assessment arbitrarily undervalues a particular class of property so as to make another class of property disproportionately higher, or achieves the same result because of legislative action, the complaining taxpayers are entitled to relief under the state constitution.³ No notice or hearing prior to equalization in determining the value of property for tax purposes may be required by either the state or federal constitutions.⁴ Moreover, the proceedings at a hearing before a state board of equalization and assessment are not bound by the strict technical rules of evidence demanded in a court of law.⁵

Real property taxes may not be equalized by merely classifying property and then arbitrarily applying a given value to all properties of that classification.⁶ The mere fact that a formula is devised, by which property is nonuniformly and disproportionately assessed, does not satisfy the constitutional requirement.⁷

CUMULATIVE SUPPLEMENT

Cases:

"Equalization" is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. [Neb. Const. art. 8, § 1](#). [Krings v. Garfield County Board of Equalization](#), 286 Neb. 352, 835 N.W.2d 750 (2013).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [State ex rel. Poulos v. State Bd. of Equalization](#), 1975 OK 60, 552 P.2d 1134 (Okla. 1975), opinion supplemented on other grounds, 1976 OK 41, 552 P.2d 1138 (Okla. 1976).
- 2 [State ex rel. Poulos v. State Bd. of Equalization for State of Okl.](#), 1982 OK 68, 646 P.2d 1269 (Okla. 1982).
- 3 [MAPCO Ammonia Pipeline, Inc. v. State Bd. of Equalization and Assessment](#), 238 Neb. 565, 471 N.W.2d 734 (1991).
- 4 [Sator v. State Dept. of Revenue](#), 89 Wash. 2d 338, 572 P.2d 1094 (1977).
- 5 [Sioux County v. State Bd. of Equalization and Assessment](#), 190 Neb. 198, 207 N.W.2d 219 (1973).
- 6 [Constructors, Inc. v. Cass County Bd. of Equalization](#), 258 Neb. 866, 606 N.W.2d 786 (2000).
- 7 [Constructors, Inc. v. Cass County Bd. of Equalization](#), 258 Neb. 866, 606 N.W.2d 786 (2000).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 702

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy


XLVI. Equalization of Assessments

A. In General

§ 702. Powers and duties of administrative agencies

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2631](#), [2632](#)

The authority of administrative agencies charged with the correction or review of original assessments is purely statutory.¹ A state board of equalization and assessment has the power to equalize the values of all real property located in the state² and to decide disagreements regarding statutory provisions affecting the assessment, levy, and collection of taxes.³ To accomplish this, it has a wide latitude of judgment and discretion in equalizing the assessment of property.⁴ Although a state board of equalization and assessment has the power to increase or decrease the actual valuation of a class or subclass of real or personal property of any county or district, it may do so only to change the value of taxable property of a county in the aggregate so that there will be equalization between the counties and the centrally assessed property considered in the aggregate.⁵ In order to determine the appropriate assessed value for property, a state board of tax and appeals must make specific findings regarding the property's market value and equalization ratio by which to discount the market value to the assessed value.⁶ However, in dealing with the intangible concepts of valuation and uniformity, a mathematically precise result can never be achieved.⁷ Neither mathematical exactness nor precise uniformity is possible in the complex task of equalization.⁸

Observation:

The department of revenue has the authority, when acting under its power to equalize, to change the taxable value of property within the appraisal cycle to comply with its constitutional mandate to tax on a uniform basis.⁹

The proceedings at a hearing before a state board of equalization and assessment are not bound by the strict technical rules of evidence demanded in a court of law.¹⁰

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 Beveridge v. Baer, 59 S.D. 563, 241 N.W. 727, 84 A.L.R. 189 (1932).
- 2 Hall County v. State Bd. of Equalization and Assessment, 250 Neb. 323, 549 N.W.2d 164 (1996).
- 3 RME Petroleum Co. v. Wyoming Dept. of Revenue, 2007 WY 16, 150 P.3d 673 (Wyo. 2007).
- 4 Hall County v. State Bd. of Equalization and Assessment, 250 Neb. 323, 549 N.W.2d 164 (1996).
- 5 AT & T Information Systems, Inc. v. State Bd. of Equalization and Assessment, 237 Neb. 591, 467 N.W.2d 55 (1991).
- 6 Appeal of City of Nashua, 138 N.H. 261, 638 A.2d 779 (1994).
- 7 Hall County v. State Bd. of Equalization and Assessment, 250 Neb. 323, 549 N.W.2d 164 (1996).
- 8 Hall County v. State Bd. of Equalization and Assessment, 250 Neb. 323, 549 N.W.2d 164 (1996).
- 9 Hanley v. Department of Revenue, 207 Mont. 302, 673 P.2d 1257 (1983).
- 10 Sioux County v. State Bd. of Equalization and Assessment, 190 Neb. 198, 207 N.W.2d 219 (1973).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation Nine XLVI B Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLVI. Equalization of Assessments

B. Necessity and Sufficiency of Notice to Taxpayer

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2623](#), [2625](#) to [2628](#)

A.L.R. Library

A.L.R. Index, Administrative Law

A.L.R. Index, Assessments

A.L.R. Index, Due Process

A.L.R. Index, Tax Court

West's A.L.R. Digest, [Taxation](#)  [2623](#), [2625](#) to [2628](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 22](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 703

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy


XLVI. Equalization of Assessments

B. Necessity and Sufficiency of Notice to Taxpayer

§ 703. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2625 to 2628

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 22](#) (Complaint, petition, or declaration—Allegation—Assessor's failure to notify taxpayers of increased assessments)

Because financial burdens will be imposed on property owners through an exercise of judicial power pursuant to specific terms of such statutes, due process of law requires notice and an opportunity to be heard.¹ However, actual notice to an individual taxpayer is not required as a condition precedent to an action by the state board of equalization.² A notice by publication is a sufficient compliance with the Due Process Clause of the United States Constitution.³

Generally, a notice to individual property owners affected is not required where a general increase is made by a board of equalization or review of the assessed valuations of all the taxable property in a given division or district (or all the property therein of a certain class), the statutes being generally construed as not requiring such notice, and the requirement being held not essential to due process of law.⁴ However, a statutory provision which expressly requires notice in cases of general or horizontal increases of assessments has been held mandatory so that if notice is not given to taxpayers in the manner provided, the action of administrative authorities in increasing an assessment is void.⁵ Thus, as a general rule, where the statute fixes the date for a

meeting of a board of equalization, taxpayers are bound to take notice thereof, and no other notice is necessary, unless expressly required by the statute, in order for the board to increase the assessment of a taxpayer.⁶

Observation:

The requirements of due process with respect to notice and the opportunity to be heard were satisfied by a statute that failed to specify a fixed date for filing a complaint with the board of appeals to revise and correct an assessment, but provided for notice by publication in one newspaper 10 days before the time for filing such complaints terminated, inasmuch as the statute itself gave notice of the opportunity to be heard by designating the period during which the board would consider complaints, implemented by published notice of the specific days as therein provided.⁷

Where an appraisal review board increased the valuation of a taxpayer's property without notifying the taxpayer of any hearing at which it could protest the unilateral imposition of an additional tax burden on its property, and thus violated the taxpayer's due process rights, the board never acquired jurisdiction of the proposed increase in value, and the board's approval thereof was a void act, subject to challenge at any time or place.⁸

If the property owner is the moving party before the board of review, notice has been held unnecessary.⁹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [State ex rel. Meyer v. Peters](#), 191 Neb. 330, 215 N.W.2d 520 (1974).
- 2 [Lamm v. Barber](#), 192 Colo. 511, 565 P.2d 538 (1977) (disapproved of on other grounds by, [Board of County Com'rs of Boulder County v. Fifty-First General Assembly of State of Colo.](#), 198 Colo. 302, 599 P.2d 887 (1979)).
- 3 [State v. Wheatley](#), 113 Miss. 555, 74 So. 427 (1917).
- 4 [Bi-Metallic Inv. Co. v. State Bd. of Equalization](#), 239 U.S. 441, 36 S. Ct. 141, 60 L. Ed. 372 (1915); [Baker v. Paxton](#), 29 Wyo. 500, 215 P. 257 (1923).
- 5 [Scott v. Barr](#), 57 Ind. App. 508, 106 N.E. 891 (1914).
- 6 [Lander v. Mercantile Nat. Bank of Cleveland](#), Ohio, 186 U.S. 458, 22 S. Ct. 908, 46 L. Ed. 1247 (1902); [State v. City of Baltimore](#), 105 Md. 1, 65 A. 369 (1906); [State v. Back](#), 72 Neb. 402, 100 N.W. 952 (1904).
- 7 [County Treasurer and Ex Officio County Collector of Cook County v. American Nat. Bank & Trust Co.](#), 26 Ill. App. 3d 753, 326 N.E.2d 120 (1st Dist. 1975).
- 8 [Garza v. Block Distributing Co., Inc.](#), 696 S.W.2d 259 (Tex. App. San Antonio 1985).
- 9 [Werner v. Reid](#), 322 Ill. 613, 153 N.E. 633 (1926).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 704

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLVI. Equalization of Assessments

B. Necessity and Sufficiency of Notice to Taxpayer

§ 704. Statutory provisions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2623

Generally, statutes provide for the giving of notice to the property owner before an increase is made in the assessment of his or her property by a board of equalization or review (where the assessment of an individual property owner, merely, is raised), and the giving of notice, unless waived, is regarded as essential to the jurisdiction of the board, or at least as mandatory, so that an increase made without notice is unauthorized and illegal.¹ Where the statute under which the state board acted in increasing an individual assessment was invalid because of not making provision for notice to the taxpayer, it has been held that actual notice to the taxpayer did not render its proceedings valid.²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Myers v. Com'rs of Baltimore County](#), 83 Md. 385, 35 A. 144 (1896).

² [Beveridge v. Baer](#), 59 S.D. 563, 241 N.W. 727, 84 A.L.R. 189 (1932).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 705

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy


XLVI. Equalization of Assessments

B. Necessity and Sufficiency of Notice to Taxpayer

§ 705. Necessity of prejudice

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2625](#) to [2628](#)

Where no change is made by a state board of equalization and assessment in the valuations of personal property in any of the counties appealing a revaluation by a state board, such counties are not prejudiced if an inquiry was made as to the personal property without notice.¹

Observation:

Notices for a show cause hearing mailed by a state board of equalization and assessment which stated the proposed changes in valuation which were substantially higher than the ultimate adjustments adopted by the board did not prejudice the counties in preparation of their defense.²

Footnotes

- 1 [Box Butte County v. State Bd. of Equalization and Assessment, 206 Neb. 696, 295 N.W.2d 670 \(1980\).](#)
- 2 [Box Butte County v. State Bd. of Equalization and Assessment, 206 Neb. 696, 295 N.W.2d 670 \(1980\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 706

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy


XLVI. Equalization of Assessments

B. Necessity and Sufficiency of Notice to Taxpayer

§ 706. Preliminary or tentative action

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2625](#) to [2628](#)

Where the preliminary action amounts to a determination, on principle, it seems that notice after the increase is made should be regarded as insufficient.¹ However, where the preliminary action constitutes a mere proposal, it seems that notice sent after the tentative increase should be deemed sufficient.² Due process of law does not require, necessarily, that a taxpayer should be accorded a hearing prior to an increase of his or her assessment by a board of equalization; there is sufficient compliance with the constitutional guaranty if the taxpayer is accorded a hearing before the tax becomes conclusive.³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [People ex rel. Bracher v. Vail, 296 Ill. 61, 129 N.E. 494 \(1920\).](#)
- ² [State ex rel. Van Raalte v. Board of Equalization of City of St. Louis, 256 Mo. 455, 165 S.W. 1047 \(1914\).](#)
- ³ [State ex rel. McLeod Lumber Co. v. Baker, 170 Mo. 194, 70 S.W. 470 \(1902\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 707

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLVI. Equalization of Assessments

B. Necessity and Sufficiency of Notice to Taxpayer

§ 707. Right to appeal

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2625](#) to [2628](#)

Persons aggrieved relative to an assessment of their property have the right to appeal to a state board of equalization from a decision of the county board provided that their grievance is with regard to their own property.¹ However, a taxpayer does not have the right to challenge a tax valuation of another taxpayer's property.²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Appeal of Lawrence County, 499 N.W.2d 626 \(S.D. 1993\).](#)

² [Appeal of Lawrence County, 499 N.W.2d 626 \(S.D. 1993\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 708

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy


XLVI. Equalization of Assessments

B. Necessity and Sufficiency of Notice to Taxpayer

§ 708. Waiver

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2625](#) to [2628](#)

The general appearance of a taxpayer before the board of equalization vests in the board jurisdiction to increase his or her assessment even if there were defects in the notice actually given.¹ Statutory requirements for notice to the property owner before an increase in his or her assessment by a board of equalization or review may be waived by the owner's voluntary appearance before the board and the owner's submission to its jurisdiction.² Thus, if the owner appears and is heard in the matter, without objection to the sufficiency of the notice, the owner will be deemed to have waived any objections in that regard.³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ State ex rel. McCune v. Carter, 279 Mo. 304, 214 S.W. 180 (1919).
- ² Comstock v. Town of Waterford, 85 Conn. 6, 81 A. 1059 (1911).
- ³ Comstock v. Town of Waterford, 85 Conn. 6, 81 A. 1059 (1911).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 709

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy


XLVI. Equalization of Assessments

B. Necessity and Sufficiency of Notice to Taxpayer

§ 709. Form and sufficiency of particular notices

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2625](#) to [2628](#)

A record of the proceedings before a state board of equalization and assessment must be sufficient to sustain an action taken by the board.¹

Observation:

Giving notice of the proceedings to increase the valuation of real property for tax purposes to a person who is incorrectly listed on the auditor's tax list as the owner does not meet statutory notice requirements.²

CUMULATIVE SUPPLEMENT

Cases:

Board of Tax Review abused its discretion in small-claims case by making a determination that was clearly contrary to the logic and effect of the facts and the law because it was based on evidence tainted by the evils of unfair surprise, where taxpayer, who had made two discovery requests, did not receive a copy of the appraisal report regarding its real property until the day of the hearing and, as a result, had no opportunity to adequately prepare any rebuttal to the evidence in the appraisal report in advance of the hearing or in the 20 minutes it had to present its case, and Board found that appraisal reflected property's market value-in-use. 52 IAC 3-1-4(d), 3-1-5(f). [RJK Trust v. LaPorte County Assessor, 43 N.E.3d 276 \(Ind. Tax Ct. 2015\)](#).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Hall County v. State Bd. of Equalization and Assessment, 250 Neb. 323, 549 N.W.2d 164 \(1996\)](#).
- 2 [Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision, 87 Ohio St. 3d 363, 2000-Ohio-452, 721 N.E.2d 40 \(2000\)](#) (holding modified on other grounds by, [MB West Chester, L.L.C. v. Butler County Bd. of Revision, 126 Ohio St. 3d 430, 2010-Ohio-3781, 934 N.E.2d 928 \(2010\)](#)).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation Nine XLVII Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Nine. Assessment and Levy

XLVII. Reassessment

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 🔑 2571, 2682

A.L.R. Library

A.L.R. Index, Reassessment

West's A.L.R. Digest, [Taxation](#) 🔑 2571, 2682

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 710

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.


Part Nine. Assessment and Levy

XLVII. Reassessment

§ 710. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2571, 2682

The "reassessment of taxes," as the term is used in the present connection, refers to the taking of formal steps to repeat the process of assessing taxes against persons or property where the same tax or taxes for the same taxable year have previously been assessed against such persons or property but have subsequently been regarded as illegally or invalidly assessed.¹ The paramount purpose of revaluation of property for tax purposes is to attain equalization of values.² Any invalidity in an original tax assessment due to a county assessor's failure to follow statutory and constitutional requirements may be cured by a valid reassessment.³ When tax authorities undertake reassessments for improper or discriminatory motives, the appropriate remedy is for the trial justice to order the tax authorities to expunge the reassessments and permanently enjoin them from collecting taxes based on these reassessments.⁴

Observation:

A county auditor's plan to reassess property for tax purposes did not result in unconstitutional searches, where the plan provided for the inspection of the interior of the taxpayer's homes only with the taxpayer's consent, as the plan contained features that indicated that consent would be truly voluntary: (1) consent would be requested at the person's home, (2) all individuals giving consent would be adult property owners, (3) the inspections would take place during daylight hours, (4) the data collectors would not be in uniform, would not be armed, and would not wear badges, (5) the inspections would be for administrative purposes, and (6) there would be no penalty for refusing consent and no criminal consequence involved in consenting to inspection.⁵

CUMULATIVE SUPPLEMENT

Cases:

Square corners doctrine did not preclude municipality from opposing taxpayer's application for Freeze Act relief, in proceeding in which taxpayer sought reduction in assessments of real property, even though, during discovery, municipality commissioned expert report that opined that property's true market value was more than 50% lower than equalized assessed value for certain tax years, where taxpayer did not file complaints in tax court challenging assessments for those particular tax years, and municipality, aware that the opinion of its expert, if adopted by the court, would require a reduction in the challenged assessments, proceeded to call its expert witness to offer testimony damaging to the municipality's own position. [N.J. Stat. Ann. § 54:51A-8. Seaboard Landing, LLC v. Borough of Penns Grove, 28 N.J. Tax 607, 2015 WL 8006052 \(2015\).](#)

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [People's Sav. Bank v. Layman, 134 F. 635 \(C.C.S.D. Iowa 1905\).](#)
- 2 [In re Allred, 351 N.C. 1, 519 S.E.2d 52 \(1999\).](#)
- 3 [Kindsfater v. Butte County, 458 N.W.2d 347 \(S.D. 1990\).](#)
- 4 [Capital Properties, Inc. v. State, 749 A.2d 1069 \(R.I. 1999\).](#)
- 5 [State, ex rel. Holcomb, v. Wurst, 63 Ohio App. 3d 629, 579 N.E.2d 746 \(12th Dist. Butler County 1989\), dismissed, 47 Ohio St. 3d 711, 548 N.E.2d 242 \(1989\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

72 Am. Jur. 2d State and Local Taxation § 711

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.


Part Nine. Assessment and Levy

XLVII. Reassessment

§ 711. Construction and validity of statutes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2571, 2682

Statutes defining a change in ownership which will permit the reassessment of real property and setting forth examples of those changes are in pari materia and must be interpreted in a manner which gives effect to each without leading to disharmony with the others.¹ A mere acquiescence of a taxpayer in a gross undervaluation of his or her property, without some active participation in the fraud of the assessing officers, as, for instance, a conspiracy between them to undervalue the property, does not constitute such fraud as to warrant a reassessment under a statute providing that such proceedings should not be brought after payment of the tax "except for actual fraud of the taxpayer."²

Observation:

A claim based upon the inequality of an assessment was stated for purposes of the Real Property Tax Law where a taxpayer, which did not directly specify the "inequality" with other taxpayers in its complaint before the state board of equalization and assessment, did make such factual allegations in its petition as to have properly brought the question of inequality as it might relate to proof of "overvaluation" and improper equalization rates to the attention of the board.³

CUMULATIVE SUPPLEMENT

Cases:

Class actions seeking relief from property reassessments were not permitted under Assessment Law, and thus, each property owner of putative class action against county board of assessment appeals and review was required to avail themselves of process under Assessment Law to obtain a reassessment, since statute providing for reassessment, which referred to taxable person who considered himself incorrectly assessed, only applied to individuals. [72 Pa. Stat. Ann. § 5452.14](#). [Martel v. Allegheny County](#), [216 A.3d 1165](#) (Pa. Commw. Ct. 2019).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Pacific Southwest Realty Co. v. County of Los Angeles](#), [1 Cal. 4th 155](#), [2 Cal. Rptr. 2d 536](#), [820 P.2d 1046](#) (1991).
- 2 [State v. Anderson-Tully Co.](#), [186 Ark. 170](#), [53 S.W.2d 17](#), [85 A.L.R. 100](#) (1932).
- 3 [Consolidated Edison Co. of New York v. State Bd. of Equalization and Assessment](#), [60 A.D.2d 356](#), [401 N.Y.S.2d 871](#) (3d Dep't 1978).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.